SECTION II - INDEX

Subject	Section of 9.94A RCW
Scoring Residential or Second Degree Burglary	.525(15)
Certificate of Discharge	.637
Classification of Felonies not in Title 9A	.035
Clemency and Pardons Board	
Emergency Meetings	.875(2)
Establish Board	.880(1)
Membership	.880(2),(3)
Petitions for Review	.885
Commission - Sentencing Guidelines	
Definition	.030(3)
Emergency Meetings	.870(1),.875(1)
Membership	.60
Power and Duties	.850
Research Staff	.855
Revision of Ranges	.865
Community Corrections Officer	
Definition	.030(4)
Powers	.631
Community Custody	
Definition	.030(5)
Drug Offender Sentencing Alternative (DOSA)	.660(2)(a)
Sex Offenses	.710, .715
Sex Offenders Under SSOSA	.670
Violations	.737
Community Custody Range	
Definition	.030(6)
Community Placement	
Arrest of Violators	.740
Definition	.030(7)
Post-release Supervision	.030(34)
Violations	.628
Scoring Offenses, Status Point	.525(17)

Subject	Section of 9.94A RCW
Community Restitution (Community Service)	
Definition	.030(9)
Drug Offender Sentencing Alternative (DOSA)	.660
First-time Offender	.650
Prohibition on Violent Offense Conversions	.680
Sentence Conversions	.680
Sex Offenders Under SSOSA	.670
Supervision of Community Service	.720
Community Supervision	
Definition	.030(10)
Confinement for One Year or Less	.545
Commencement of Supervision	.545
Consecutive Sentences, Total Confinement Served	.589(5)
First-time Offender	.650
Limitation on Community Supervision	.650, .505(5)
Supervision	.720
Unranked Offenses	.505(2)(b)
Voluntary Counseling	.637(4)
Concurrent Sentences	
Multiple Prior Convictions	.525(5)
Multiple Current Convictions	.589(1)(a)
Serious Violent Offenses Exception	.589(1)(b)
Confinement	
Alternative Conversions	.680
Credit for Time Served	.505(6)
Confinement of 30 Days or Less	.505(3)
Definition	.030(11)
Extraordinary Release	.728(4),(5)
Furlough	.728(3)
Good Time (Earned Early Release)	.728(1)
Limitation on Confinement	.650
Partial Confinement	.030(31),.728(6),.731
Ten-day Early Release	.728(8)
Confinement - Tolling Period	.0170

Subject	Section of 9.94A RCW
Counseling Costs of Victim	.670
Upon Discharge	.637
Court Costs (See Legal Financial Obligations)	.750, .753, .760
Day Fine	.030(15)
Day Reporting	.030(16)
Deadly Weapon	
Accomplice	.602
Addition to Sentence Range	.533(4),.530,.537
Definition	.602
Findings of Fact or Special Verdict	.602
Firearm	.533(3)
Decay of Prior Record Policy (See "Wash Out")	
Deception, Fraud, Notice to Public	.750(7),.753(8)
Deferred Sentences Abolished	.575
Department of Corrections	
Community Service and Supervision	.720
Definition	.030(17)
Determination and Collection of Assessments	.780(2),(3)
Determinate Sentence	
Application	.505(2)(a)(i)
Definition	.030(18)
Outside Standard Range	.535, .537
Unranked Crimes	.505(2)(b)
Disapproval of Plea Agreement	.431(1)
Discharge of Offender	.637
Disposable Earnings Definition	.030(19)
DOC Specialized Training Requirement	.580
Drug Offender Sentencing Alternative (DOSA)	.660
Definition	.030(20)

Subject	Section of 9.94A RCW
Drug Offense	
Definition	.030(21)
Scoring Rule	.525(12)
Sentencing Alternative	.660
Drug Offenders Notice of Release or Escape	.610
Early Release	
Definition	.030(22)
Earned Early Release	.728(1)
Ten-day Early Release	.728(8)
Education	
First-time Offender	.650
Work Release	.030(50)
Emergency Release	.728(9),.870,.875
Amend or Revise Standard Range	.870(1),.875(1)
Clemency and Pardons Board	.870(2),.875(2)
Sentencing Guidelines Commission	.870(1),.875(1)
Enhancements	
Correctional Facility	.533(5)
Deadly Weapon	.533(4)
Firearm	.533(3)
Protected Zone	.533(6)
Vehicular Homicide	.533(7)
Equal Application of Guidelines	.340
Escape	
Definition	.030(23)
Scoring Rules	.525(14)
Tolling of Sentence	.625
Willful Failure to Return	.525(13)
Evaluation of Sex Offender	.670, .820
Exemptions for Assessments	.780(1)
Exceptional Sentences	
Aggravating Circumstances	.535(2),(3)
Appellate Opinions	.585(6)
Appellate Review	.585(2),(4)

Subject	Section of 9.94A RCW
Concurrent/Consecutive Sentences	.535, .589
Determinate Sentence	.535
Findings of Fact, Conclusions of Law	.535, .537
Length of Sentence	.505(5)
Mandatory Minimum	.590
Method of Appellate Review	.585(5)
Mitigating Circumstances	.535(1)
Record	.585(5)
Substantial and Compelling Reasons	.535,.505(2)(b)
Extraordinary Medical Placement	.728
Felony Traffic Offense	
Definition	.030(24)
Scoring Rule	.525(11)
Fines	
Definition	.030(25)
First-time Offenders	.650
Ranges for Fines	.550
Sex Offender	.670
Supervision	.720
Time and Manner for Payment	.505(4)
Firearm Enhancement	.533(3)
First-time Offenders	
Definition	.030(26)
Exclusions	.650
Specific Conditions	.650
Fraud or Deceptive Practice	.753(8)
Notice to Class of Persons Affected	.753(5)
Furlough	.728(3)
Exceptions	.560
Geographic Limitations	
First-time Offender	.650
Sex Offender	.670
Good Cause - Continuance of Sentence Hearing	.500

Subject	Section of 9.94A RCW
Good Time (Earned Early Release)	.728(1)
Governor's Pardon effective	.728(7)
Governor's Powers	.565
Harassment Conviction	
Notification Procedures upon Release or Escape	.612
Hard Time for Armed Crime Initiative	.533(3)
Hearing, Sentencing	
Continuance	.500
Court's Consideration	.500
Criminal History - Preponderance of the Evidence	.441
Evidentiary Hearing	.530(2), .537
Findings of Fact, Conclusions of Law	.500, .535, .537
Modification of Sentence	.634(1)
Participants	.500
Plea Agreement	.421, .431, .441
Presentence Report	.500,.530
Real Facts Policy	.530
Record	.500
Time Limitations, 40-Day Rule	.500
Home Detention	
Definition	.030(27)
Eligibility	.030(26),.734
Partial Confinement	.731(2),.190(1)
Sentencing	.505(10)
Violation of Rules	.731(2)
Hospital Option - Sex Offender	.800
Commitment to DSHS Program	.800
Commitment to DOC Program	.800
Evaluation	.820
Limitation on Confinement	.820
Transfer of Program to DOC	.830
Immunity from Liability	
Law Agencies and DOC	.844
Sex Offender Information	.843

Subject	Section of 9.94A RCW
Indeterminate Sentence Review Board	
Supervision of Indeterminate Sex Offenders	.712(5)
Member of Sentencing Guidelines Commission	.860(2)
Information, Indictment, Dismissal	.640(1)
Intermittent Sentence	
Confinement of 30 Days or Less	.505(3)
Judges	
Approval of Plea Agreement	.431(1)
No Obligation to Terms of Plea Bargain	.431(2)
Reasons for Denying Alternative Sentence	.680
Report on Sentencing Practices	.480
Juvenile Criminal History	
Burglary Convictions	.525(10)
Class A, B, C "Wash Out Policy"	.525(2)
Concurrent Prior Convictions	.525(5)
Definition	.030(14)
Drug Convictions	.525(12)
Multiple Prior Adjudications	.525(5)
Rounding Down	.525
Sex and Class A Offenses Always Counting	.525(2)
Leave of Absence from Custody	.728(3)
Legal Financial Obligation	
Civil Action Allowed	.760(4)
Cost of Incarceration	.760(2)
Court Ordered Legal Financial Obligation	.760(1)
Definition	.030(28)
Disposable Earnings	.030(19)
Modifying	.760(7)
Monthly Payments, Starting dates and Construction	.722
Sentences Imposed Before July 1, 1989	.771
Legislative Modification of Sentence Range	.865
Emergency Overcrowding	.870(1),.875(1)
Failure of Legislature to Act	.870(1),.875(1)
Limitation on Appellate Reversal	.585(4)

Subject	Section of 9.94A RCW
Mandatory Minimum Sentences	.540
Maximum Terms	.505(5)
Misdemeanors	
Offender Scoring Exception (Serious Traffic)	.525(11)
Mitigating Circumstances for Exceptional Sentences	.535(1)
Modification of Sentence Due to Violations	.634
Modification of Sentence Ranges by Legislature	.865
Monetary Payments Time Limitations	.505(4)
Most Serious Offense	
Definition	.030(29)
Multiple Current Conviction	.589(1)(a)
Multiple Prior Adult and Juvenile Conviction	.525(5)
No-Contact Order	.505(8))
Notice - Fraud or Deceptive Practice	.753(5)
Noncompliance with Sentence	
Arrest by Community Corrections Officer	.631
Burden of Proof	.634(3)(c)
Credit for Time Served Awaiting Hearing	.634(3)(c)
Hearing	.634(3)(a)(ii)
Modification of Sentence	.634(1)
Non-willful Violation	.634(3)(d)
Penalty	.634(3)
Personal Recognizance, Bail	.631
Search and Seizure Based on Reasonable Cause	.631
Nonviolent Offense	.030(30)
Notification upon Release or Escape	
Harassment Conviction	.612
Serious Drug Offender	.610

Subject	Section of 9.94A RCW
Sex Offender Release	.612
Violent Offense	.612
Offender	
Definition	.030(31)
Offender Notification and Warning	
Most Serious Offense/Persistent Offender	.561
Offender Score Calculation	
Burglary	.525(10),(15)
Drug	.525(12)
Escape	.525(14)
Multiple Current Convictions	.589(1)(a)
Multiple Prior Convictions	.525(5)
Nonviolent Offense	.525(7)
Out-of-state Convictions	.525(3)
Prior Juvenile Convictions	.525
Rounding Down	.525
Serious Traffic Convictions	.525(11)
Serious Violent Convictions	.525(9)
Sex Offender	.525(16)
Status Point	.525(17)
Traffic Offenses	.525(11)
Vehicular Homicide	.525(11)
Violent Offense	.525(8)
Wash Out	.525(2)
Willful Failure to Return	.525(13)
Offense Seriousness Level	.515,..518,520
Outside Sentence Range	
Aggravating Factors	.535(2),(3)
Appeals	.585
Drug Offender Sentencing Alternative (DOSA)	.660
Findings of Fact and Conclusions of Law	.535, .537
Substantial and Compelling Reasons	.535
Overcrowding	
Board of Prison Terms and Paroles	.870(2)
Clemency and Pardons Board	.875(2)
Emergency Meetings	.870(1),.875(1)

Subject	Section of 9.94A RCW
Jail	.875
Prison	.870
Sentencing Guidelines Commission	.870(1),.875(1)
Pardons	.728(7)
Emergency	.875(2)
Petition to Clemency and Pardons Board	.885
Partial Confinement	
Eligibility	.680
Definition	.030(32)
Served in Home Detention	.505(10),
Reimbursement to State	.190(2)
Served in Work Crew	.731, .725
Served in Work Release	.731
Persistent Offenders	
Mandatory Minimum)	.570
Definition	.030(33)
Finding and Intent	.555
Petition for Sentence Review	.585(7)
Plea Agreement Options	.421
Plea Agreement Hearing	.441
Plea Agreement as Public Record	.475
Post Release Supervision	
Definition	.030(34)
Violation	.628
Preponderance of Evidence	.500,.634(3),.530
Presentence Reports	.500
Presumptive Sentence Range	.530
Prior Conviction	.525(1)
Prosecuting Standards	.411,.450,.460
Protected Zone Enhancement	.533(6)
Purposes of Guidelines	.010

Subject	Section of 9.94A RCW
Mandatory Minimums	.540
Maximum Sentence	.505(5),.599
Noncompliance with Sentence	.634
Outside Standard Range	.505(2)(xi), .535, .537
Presumptive Sentence Range	.530
Revision	.865
Sex Offender Under SSOSA	.670
Sentence Within Standard Range	.505(2)(a)(i)
Unranked Crimes	.505(2)(b)
Sentences Served	
Concurrent	.589(1)(a)
Consecutive	.589(1)(b)
Consecutive Days	.505(3)
Intermittent Days	.505(3)
Greater than One Year	.190
Less than One Year	.190
Noncompliance with Sentence	.631
State and Local Sentence Combinations	.190(3)
Suspended Sentences Abolished	.575
Sentencing Grid - Non VUCSA Offenses	.510(1)
Sentencing Guidelines Commission	
Clearing House and Information Center	.850
Definition	.030(3)
Emergency Meetings	.870(1),.875(1)
Membership	.860
Report on Sentencing Practices	.480
Sentence Excessive or Too Lenient	.585(4)(b)
Sentence Violation (See Noncompliance)	
Sentencing Hearing	
Continuance	.500
Court's Considerations	.500,.530
Criminal History - Preponderance of the Evidence	.441,.500
Evidentiary Hearing	.530
Findings of Fact and Conclusions of Law	.500,.670
Time Limitations, 40-Day Rule	.500
Modification of Sentence	.634(1)

Subject	Section of 9.94A RCW
Participants	.500
Plea Agreement	.421,.431,.441
Plea Agreement	.475,.530
Presentence Report	.500,.530
Real Facts Policy	.530(2)
Record	.500
Transfer of Record	.500
Seriousness Level	.515,..518,520,
Serious Traffic Offense	
Definition	.030(39)
Offender Score	.525(11)
Serious Violent Offense	
Definition	.030(40)
Offender Score	.525(9)
Sentencing (Multiple Offenses)	.589(1)(b)
Sex Offense	
Definition	.030(41)
Sex Offender	
Community Benefit Standard	.670
Confinement	.670(5)(a)
Conversion of Sentence	.670(4)(b)
Costs of Victim's Counseling	.670(5)(h)
Credit for Time Served	.670(10)
DOC Treatment Program	.800(1)
Employment or Occupation	.670(5)(c)
Evaluation	.670(3)
Geographic Boundaries	.670(5)(d)
Hospital Option	.670(3)
Inpatient and Outpatient Treatment	.670(4)(b)
Location of Treatment Program	.830
Noncompliance with Conditions of Treatment	.670(9)
Notification Required at Release or Escape	.840,.612
Offender Score Rules	.525(16)
Presentence Report	.500
Report to Corrections Officer (effective 7/1/2001)	.670(4)(b)

Subject	Section of 9.94A RCW
SSOSA Eligibility	.670(2)
Suspended Sentence	.670
Treatment in Community	.820
Treatment Provider	.670(1)(a), .670(7), .670(11)
Sexual Motivation	
Aggravating Circumstance	.535(3)(f)
Charging	.835
Definition	.030(42)
Statutory Maximum	
Definition	.30(44)
Solicitation (See Anticipatory Offenses)	
Stipulation to Facts to Establish a Higher Crime	.530
Substantial and Compelling Reasons	.505(2)(xi), .535
Suspended Sentence Abolished	.575
Sex Offender Exception	.670, .575
Tables	
Sentencing Grid Table 1	.510(1)
Seriousness Level Table 2	.515
Drug Offense Sentencing Grid Table 3	.517
Total Confinement (See Confinement)	..030(45)
Tolling	.625
Traffic Convictions	
Definition	.030(24)
Offender Score	.525(11)
Transition Training	
Definition	.030(46)
Work Ethic Camp	.690(5)
Treatment	
First-time Offender	.650(2)(b),.650(3)(a)
Chemical Dependency Finding	.607
Court Orderd Treatment –Offender's Failure	.723

Subject	Section of 9.94A RCW
Court-Ordered Treatment – Required Disclosure	.722
Court Orderd Treatment – Required Notices	.562
Drug Offender Sentencing Alternative (DOSA)	.660(2)
Sex Offender with SSOSA	.670(4)
Uncharged Crimes, Restitution	.750(2),.753(2)
Under Sentence of Another Conviction	.589(2),(3)
Unranked Crimes	.505(2)(b)
Vacation of Conviction Record	.640
Vehicular Homicide	
Criminal History	.525(11)
Definition as Violent Offense	.030(48)(xiv)
Victim	
Definition	.030(47)
Plea Agreements	.421,.431,.850
Statements	.500
Victim and Witness Notification	.614,.616,.618, .620
Violations (See Noncompliance with Sentence)	
Violent Offense	
Definition	.030(48)
Notification upon Release or Escape	.612
Offense Score	.525(8)
"Wash Out" of Prior Felonies	
Adult and Juvenile	.525(2)
Weapons, Deadly	
Accomplice	.602
Additions to Sentence Range	.530
Definition	.602
Findings of Fact or Special Verdict	.602
Firearms	.533(3)
Sentencing Grid Provision	.533(3),.533(4)

Subject	Section of 9.94A RCW
Withdrawal of Guilty Pleas	.640(1)
Work Crew	
Definition	.030(49)
Requirements	.725
Violation of Rules	.731(2)
Work Ethic Camp Program – Eligibility Sentencing	
Definition	.030(50)
Eligibility	.690(1)
Sentencing	.690(2)
Assignment to Program	.690(3)
Failure to Complete	.690(4)
Length of Program	.690(1)(b),(5)
Work Release	
Conditions	.505(10), .725
Definition	.030(51)
Violation of Rules	.731(2)

CHAPTER 9.94A RCW
SENTENCING REFORM ACT OF 1981

RCW SECTIONS

9.94A.010 Purpose.

9.94A.015 Finding -- Intent -- 2000 c 28.

9.94A.020 Short title.

9.94A.030 Definitions.

9.94A.035 Classification of felonies not in Title 9A RCW.

9.94A.190 Terms of more than one year or less than one year -- Where served -- Reimbursement of costs.

9.94A.340 Equal application.

9.94A.345 Timing.

9.94A.401 Introduction.

9.94A.411 Evidentiary sufficiency.

9.94A.421 Plea agreements -- Discussions -- Contents of agreements.

9.94A.431 Plea agreements -- Information to court -- Approval or disapproval -- Sentencing judge not bound.

9.94A.595 Anticipatory offenses.

9.94A.599 Presumptive ranges that exceed the statutory maximum.

9.94A.602 Deadly weapon special verdict -- Definition.

9.94A.605 Methamphetamine -- Manufacturing with child on premises -- Special allegation.

9.94A.607 Chemical dependency.

9.94A.610 Drug offenders -- Notice of release or escape.

9.94A.612 Prisoner escape, parole, release, placement, or furlough -- Notification procedures.

9.94A.614 Prisoner escape, release, or furlough -- Homicide, violent, and sex offenses -- Rights of victims and witnesses.

9.94A.616 Prisoner escape, release, or furlough -- Requests for notification.

9.94A.618 Prisoner escape, release, or furlough -- Notification as additional requirement.

9.94A.620 Prisoner escape, release, or furlough -- Consequences of failure to notify.

9.94A.625 Tolling of term of confinement, supervision.

9.94A.628 Postrelease supervision -- Violations -- Expenses.

9.94A.631 Violation of condition or requirement of sentence -- Arrest by community corrections officer -- Confinement in county jail.

9.94A.634 Noncompliance with condition or requirement of sentence -- Procedure -- Penalty.

9.94A.637 Discharge upon completion of sentence -- Certificate of discharge -- Obligations, counseling after discharge.

9.94A.640 Vacation of offender's record of conviction.

9.94A.650 First-time offender waiver.

9.94A.660 Drug offender sentencing alternative.

9.94A.670 Special sex offender sentencing alternative.

9.94A.680 Alternatives to total confinement.

9.94A.685 Alien offenders.

9.94A.690 Work ethic camp program -- Eligibility -- Sentencing.

9.94A.700 Community placement.

9.94A.705 Community placement for specified offenders.

9.94A.710 Community custody for sex offenders.

9.94A.712 Sentencing of nonpersistent offenders.

9.94A.713 Nonpersistent offenders -- Conditions.

9.94A.715 Community custody for specified offenders.

9.94A.720 Supervision of offenders.

9.94A.722 Court-ordered treatment--Required disclosures.

9.94A.723 Court-ordered treatment--Offender's failure to inform.

9.94A.725 Offender work crews.

9.94A.728 Earned release time.

9.94A.7281 Legislative declaration -- Earned release time not an entitlement.

9.94A.7282 Earned release study.

9.94A.731 Term of partial confinement, work release, home detention.

9.94A.734 Home detention -- Conditions.

9.94A.737 Community custody -- Violations.

9.94A.740 Community placement, custody violators -- Arrest, detention, financial responsibility.

9.94A.745 Interstate compact for adult offender supervision.

9.94A.74501 State council.

9.94A.74502 Compact administrator.

9.94A.74503 Other compacts and agreements -- Withdrawal from current compact.

9.94A.74504 Supervision of transferred offenders -- Processing transfer applications.

9.94A.750 Restitution.

9.94A.753 Restitution -- Application dates.

9.94A.760 Legal financial obligations.

9.94A.7601 "Earnings," "disposable earnings," and "obligee" defined.

9.94A.7602 Legal financial obligation -- Notice of payroll deduction -- Issuance and content.

9.94A.7603 Legal financial obligations -- Payroll deductions -- Maximum amounts withheld, apportionment.

9.94A.7604 Legal financial obligations -- Notice of payroll deduction -- Employer or entity rights and responsibilities.

9.94A.7605 Motion to quash, modify, or terminate payroll deduction -- Grounds for relief.

9.94A.7606 Legal financial obligations -- Order to withhold and deliver -- Issuance and contents.

9.94A.7607 Legal financial obligations -- Order to withhold and deliver -- Duties and rights of person or entity served.

9.94A.7608 Legal financial obligations -- Financial institutions -- Service on main office or branch, effect -- Collection actions against community bank account, court hearing.

9.94A.7609 Legal financial obligations -- Notice of debt -- Service or mailing -- Contents -- Action on, when.

9.94A.761 Legal financial obligations -- Exemption from notice of payroll deduction or order to withhold and deliver.

9.94A.7701 Legal financial obligations -- Wage assignments -- Petition or motion.

9.94A.7702 Legal financial obligations -- Wage assignments -- Answer.

9.94A.7703 Legal financial obligations -- Wage assignments -- Amounts to be withheld.

9.94A.7704 Legal financial obligations -- Wage assignments -- Rules.

9.94A.7705 Legal financial obligations -- Wage assignments -- Employer responsibilities.

9.94A.7706 Legal financial obligations -- Wage assignments -- Form and rules.

9.94A.7707 Legal financial obligations -- Wage assignments -- Service.

9.94A.7708 Legal financial obligations -- Wage assignments -- Hearing -- Scope of relief.

9.94A.7709 Legal financial obligations -- Wage assignments -- Recovery of costs, attorneys' fees.

9.94A.771 Legal financial obligations -- Wage assignments -- Sentences imposed before July 1, 1989.

9.94A.772 Legal financial obligations -- Monthly payment, starting dates -- Construction.

9.94A.775 Legal financial obligations -- Termination of supervision -- Monitoring of payments.

9.94A.780 Offender supervision assessments.

9.94A.800 Sex offender treatment in correctional facility.

9.94A.810 Transition and relapse prevention strategies.

9.94A.820 Sex offender treatment in the community.

9.94A.830 Legislative finding and intent -- Commitment of felony sexual offenders after July 1, 1987.

9.94A.835 Sexual motivation special allegation -- Procedures.

9.94A.840 Sex offenders -- Release from total confinement -- Notification of prosecutor.

9.94A.843 Sex offenders -- Release of information -- Immunity.

9.94A.844 Sex offenders -- Discretionary decisions -- Immunity.

9.94A.846 Sex offenders -- Release of information.

9.94A.850 Sentencing guidelines commission -- Established -- Powers and duties.

9.94A.855 Sentencing guidelines commission -- Research staff -- Data, information, assistance -- Bylaws -- Salary of executive officer.

9.94A.860 Sentencing guidelines commission -- Membership -- Appointments -- Terms of office -- Expenses and compensation.

9.94A.865 Standard sentence ranges -- Revisions or modifications -- Submission to legislature.

9.94A.870 Emergency due to inmate population exceeding correctional facility capacity.

9.94A.875 Emergency in county jails population exceeding capacity.

9.94A.880 Clemency and pardons board -- Membership -- Terms -- Chairman -- Bylaws -- Travel expenses -- Staff.

9.94A.885 Clemency and pardons board -- Petitions for review -- Hearing.

9.94A.890 Abused victim--Resentencing for murder of abuser.

9.94A.905 Effective date of RCW 9.94A.080 through 9.94A.130,9.94A.150 through 9.94A.230, 9.94A.250,9.94A.260 -- Sentences apply to felonies committed after June 30, 1984.

9.94A.910 Severability -- 1981 c 137.

9.94A.920 Headings and captions not law -- 2000 c 28.

9.94A.921 Effective date -- 2000 c 28.

9.94A.922 Severability -- 2000 c 28.

9.94A.923 Nonentitlement.

9.94A.924 Severability -- 2002 c 290.

9.94A.925 Application -- 2003 c 379 §§ 13-27.

9.94A.930 Recodification.

NOTES:

Juvenile disposition standards commission--Functions transferred to sentencing guidelines commission: RCW 13.40.005.

RCW 9.94A.010
Purpose.

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

(1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;

(2) Promote respect for the law by providing punishment which is just;

(3) Be commensurate with the punishment imposed on others committing similar offenses;

(4) Protect the public;

(5) Offer the offender an opportunity to improve him or herself;

(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community.

[1999 c 196 § 1; 1981 c 137 § 1.]

NOTES:

Severability -- 1999 c 196: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 196 § 20.]

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Comment

In 1983, the Legislature considered enumerating specific factors which could not be considered in sentencing the offender, including race, creed and gender. However, the Legislature decided that to list such factors could narrow the scope of their intent, which was to prohibit discrimination as to any element that does not relate to the crime or the previous record of the defendant. For this reason, the statute requires that the sentencing guidelines and prosecuting standards be applied equally "without discrimination."

The 1999 Legislature, enacting the Offender Accountability Act, established another purpose of the Sentencing Reform Act: to "reduce the risk of reoffending by offenders in the community." The Legislature also expanded upon the goal of making frugal use of state resources to promote frugal use of local governments' resources, as well.

RCW 9.94A.015
Finding -- Intent -- 2000 c 28.

The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement.

[2000 c 28 § 1.]

NOTES:

Technical correction bill -- 2000 c 28: "If any amendments to RCW 9.94A.120, or any sections enacted or affected by chapter 28, Laws of 2000, are enacted in a 2000 legislative session that do not take cognizance of chapter 28, Laws of 2000, the code reviser shall prepare a bill for introduction in the 2001 legislative session that incorporates any such amendments into the reorganization adopted by chapter 28, Laws of 2000 and corrects any incorrect cross-references." [2000 c 28 § 45.]

RCW 9.94A.020
Short title.

This chapter may be known and cited as the sentencing reform act of 1981.

[1981 c 137 § 2.]

RCW 9.94A.030
Definitions. ***(Effective July 24, 2005.) (Expires July 1, 2006.)***

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95, RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,9.94A.690 , 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is

the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of

this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(21) "Drug offense" means:

(a) Any felony violation of chapter 69.50, RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(24) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(28) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under **RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(30) "Nonviolent offense" means an offense which is not a violent offense.

(31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(32) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(33) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (33)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(34) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(35) "Private school" means a school regulated under chapter 28A.195, or 28A.205, RCW.

(36) "Public school" has the same meaning as in RCW 28A.150.010.

(37) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(38) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(39) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(40) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(41) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44, RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A, RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28, RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(42) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(43) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(44) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20, RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(45) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(46) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(47) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(48) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(49) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(50) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(51) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

[2005 c 436 § 1; 2003 c 53 § 55. Prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

NOTES:

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

**(2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

Expiration date -- 2005 c 436: "This act expires July 1, 2006." [2005 c 436 § 6.]

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Finding -- 2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A, RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application -- 2002 c 107: "RCW 9.94A.030(13) (b) and (c) and9.94A.525 (18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application -- 2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

Intent -- Severability -- Effective dates--2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates -- 2001 c 287: See note following RCW 9A.76.115.

Effective date -- 2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding -- Intent -- 2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1999 c 197: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 197 § 14.]

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Application -- Effective date -- Severability -- 1998 c 290: See notes following RCW 69.50.401.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Finding -- 1996 c 275: See note following RCW 9.94A.505.

Application -- 1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Purpose -- 1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Effective date -- 1995 c 108: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 108 § 6.]

Finding -- Intent -- 1994 c 261: See note following RCW 16.52.011.

Severability -- Short title -- Captions -- 1994 c 1: See notes following RCW 9.94A.555.

Severability -- Effective date--1993 c 338: See notes following RCW 72.09.400.

Finding -- Intent--1993 c 251: See note following RCW 38.52.430.

Effective date -- 1991 c 348: See note following RCW 46.61.520.

Effective date -- Application -- 1990 c 3 §§ 601-605: See note following RCW 9.94A.835.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose -- 1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application -- 1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates -- 1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability -- 1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application -- 1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date -- 1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions -- 1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date -- Savings -- Application -- 1988 c 145: See notes following RCW 9A.44.010.

Severability -- 1987 c 458: See note following RCW 48.21.160.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates -- 1984 c 209: See note following RCW 9.92.150.

Effective date -- 1983 c 163: See note following RCW 9.94A.505.

RCW 9.94A.030
Definitions. ***(Effective July 1, 2006.)***

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95, RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,9.94A.690 , 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon

completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(10) "Confinement" means total or partial confinement.

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(15) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is

required to report daily to a specific location designated by the department or the sentencing court.

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(18) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(19) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50, RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(21) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state

would be a felony classified as an escape under (a) of this subsection.

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(24) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(25) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(26) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(27) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(28) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under **RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(29) "Nonviolent offense" means an offense which is not a violent offense.

(30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(31) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(33) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(34) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may

include both public and private costs.

(35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(36) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(37) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44, RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A, RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28, RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(41) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20, RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(45) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

[2003 c 53 § 55. Prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1;

1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

NOTES:

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

**(2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Finding -- 2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A, RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application -- 2002 c 107: "RCW 9.94A.030(13) (b) and (c) and9.94A.525 (18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application -- 2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

Intent -- Severability -- Effective dates--2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates -- 2001 c 287: See note following RCW 9A.76.115.

Effective date -- 2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding -- Intent -- 2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1999 c 197: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 197 § 14.]

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Application -- Effective date -- Severability -- 1998 c 290: See notes following RCW 69.50.401.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Finding -- 1996 c 275: See note following RCW 9.94A.505.

Application -- 1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Purpose -- 1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Effective date -- 1995 c 108: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 108 § 6.]

Finding -- Intent -- 1994 c 261: See note following RCW 16.52.011.

Severability -- Short title -- Captions -- 1994 c 1: See notes following RCW 9.94A.555.

Severability -- Effective date--1993 c 338: See notes following RCW 72.09.400.

Finding -- Intent--1993 c 251: See note following RCW 38.52.430.

Effective date -- 1991 c 348: See note following RCW 46.61.520.

Effective date -- Application -- 1990 c 3 §§ 601-605: See note following RCW 9.94A.835.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose -- 1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application -- 1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates -- 1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability -- 1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application -- 1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date -- 1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions -- 1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date -- Savings -- Application -- 1988 c 145: See notes following RCW 9A.44.010.

Severability -- 1987 c 458: See note following RCW 48.21.160.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates -- 1984 c 209: See note following RCW 9.92.150.

Effective date -- 1983 c 163: See note following RCW 9.94A.505.

Comment

"Community Custody" *was first defined in 1988 in relation to the community placement program. The 1996 Legislature amended the definition of "community custody" to include the status of persons sentenced under the Special Sex Offender Sentencing Alternative (see RCW 9.94A.120(8)).*

The 1999 Legislature, enacting the Offender Accountability Act, extended community custody to apply to all sex offenses, all violent offenses, all crimes against persons (defined in RCW 9.94A.440) and all felony drug offenses (except DOSA sentences) committed on or after July 1, 2000. The term "community custody" replaced "community supervision," "community placement" and "post-release supervision." Offenders required to serve a period of community custody as part of the sentence will be supervised according to the risk they pose and may be subject to the imposition of affirmative conditions by sentencing courts (such as rehabilitative treatment), as long as such conditions are reasonably related to the circumstances of the offense, the risk of recidivism and community safety. The Department of Corrections may also impose affirmative conditions, as long as they are not in contravention of court orders. See RCW 9.94A.120(5)(b)(ii), (7), (11), (14), (15) and (16). Courts are permitted to impose affirmative conditions on sex offenders beyond their term of community custody.

"Community Custody Range" *was defined by the 1999 Legislature as part of the Offender Accountability Act. The Sentencing Guidelines Commission was directed by the Legislature to formulate community custody ranges by December 31, 1999. The ranges became effective for eligible offenses committed on or after July 1, 2000. Future modifications of community custody ranges will require the enactment of a bill by the Legislature. See RCW 9.94A.040(5). Courts must sentence offenders to community custody for the period of the community custody range or for the period of earned release time, whichever is longer. Offenders must remain on community custody for either the period of earned release or at least the minimum of their community custody range, whichever is longer.*

"Community Placement" *was established by the 1988 Legislature and included "community custody" and "post-release supervision." The 1999 Legislature required a one-year period of community placement for all violent offenses and for all crimes against persons (defined in RCW 9.94A.440), committed between July 25, 1999 and June 30, 2000. For offenses committed on or after July 1, 2000, the term "community placement" no longer applies and all forms of supervision in the community will fall under the definition of "community custody".*

"Crime-Related Prohibition" *was amended by the 1997 Legislature to clarify that "crime-related prohibition," while generally not including orders that offenders perform affirmative conduct, nevertheless allows the Department of Corrections to require certain affirmative acts, such as undergoing drug testing or polygraph examinations, necessary to monitor compliance with crime-related prohibitions.*

"Criminal History" *was first amended in 1986 to reflect the serious nature of Class A felonies, so that prior juvenile Class A felonies do not "wash out" when the defendant becomes 23 years of age.*

In 1988, the Commission recommended that the definition of juvenile criminal history (RCW 9.94A.030(12)(b)) be amended to include serious traffic offenses. The offender scoring rules (RCW 9.94A.360) include serious traffic offenses when determining the sentence range for felony traffic offenses; therefore, this section was changed to be consistent.

The 1990 Legislature amended the definition of "criminal history" so that juvenile convictions for sex offenses are always included in criminal history despite the offender's age or the class of the crime.

The 1995 Legislature expanded the definition of "criminal history" to include juvenile convictions for serious violent offenses, regardless of the offender's age at the time of the offense.

The 1997 Legislature removed the provision for "wash out" at age 23 for <u>all</u> juvenile felonies, repealing language that excluded certain adjudications for non-violent, non-sex offenses committed before the offender was 15 years old.

In 1999, the Court of Appeals ruled that pre-1997 plea agreements, providing that certain juvenile offenses would not be counted in criminal history, do not insulate current offenders from changes in the law and cannot be relied upon when an offender is sentenced on a subsequent conviction for an offense committed after the effective date of the change in 1997. See State v. McRae, 96 Wn. App. 298 (1999).

"Drug Offense," *as defined in the Sentencing Reform Act, excludes simple possession, forged prescriptions and violations of the Legend Drug Act.*

In 1999, the Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the multiple "scoring" requirement for drug offenses, under RCW 9.94A.360, or to the community

placement requirement for drug offenses, under RCW 9.94A.120(9)(a). See In re Hopkins, 137 Wn.2d 897 (1999).

***"Escape"** was amended in 1988 to include failure to comply with movement limitations while on community custody.*

***"Felony Traffic Offense"** was amended in 1984 to include Eluding a Police Officer. That provision was removed from the definition in 1986. The 1987 Legislature once again defined this crime as a felony traffic offense.*

***"Financial Obligation"** was amended by the 1993 Legislature to expand the range of financial obligations that may be imposed against offenders convicted of Vehicular Assault or of Vehicular Homicide While Under the Influence of Intoxicating Liquor or Any Drug. The court may now impose up to $1,000 in costs incurred by public agencies in an emergency response to the incident that resulted in a conviction.*

***"First-time Offender"** at first confused practitioners and raised questions concerning whether prior juvenile convictions precluded an adult offender from being sentenced as a "First-time Offender." Changes in the definition in 1986 made it clear that a juvenile offense committed at the age of 15 years or older disqualifies the offender from being sentenced under the First-time Offender Waiver. The 1995 Legislature modified the definition of "First-time Offender" to exclude persons with prior juvenile adjudications of serious violent offenses, regardless of age at the time of adjudication. The 1997 Legislature further disqualified offenders with <u>any</u> prior juvenile felony adjudication from the First-time Offender Waiver.*

The definition of "First-time Offender" was amended in 1987 to exclude the use of the waiver for persons convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Schedule I or II Narcotics.

In order to include certain Vehicular Homicide offenders in the First-time Offender Waiver, the definition of "violent offenses" was amended in 1987 to include Vehicular Homicide only when caused by driving under the influence or by reckless driving. Vehicular Homicide is not classified as a violent offense if caused by disregard for the safety of others.

The 1995 Legislature amended the definition of "First-time Offender" to exclude persons convicted of Manufacture, Delivery, or Possession with Intent to Deliver Methamphetamine.

The 1998 Legislature amended the definition of "First-time Offender" to exclude persons convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Flunitrazepam from Schedule IV (commonly known as Rohypnol).

***"Most Serious Offense"** was first defined in 1993, as part of Initiative Measure No. 593, which added the definitions of "most serious offense" and "persistent offender." The definition of "persistent offender" requires two previous convictions "as an offender" of "most serious offenses."*

***"Offender"** was defined in 1993 to include juveniles whose cases are transferred from juvenile court to adult criminal court when the juvenile court declines jurisdiction after a hearing under*

RCW 13.40.110. However, the definition did not include juveniles whose cases are transferred automatically to adult criminal court under RCW 13.04.030(1)(e)(iv), a provision added by the Youth Violence Act of 1994. That legislation gave criminal courts exclusive original jurisdiction of certain cases involving juveniles age 16 or older, without requiring juvenile courts to decline jurisdiction. The 1997 Legislature clarified that a conviction of a 16- or 17-year-old in adult criminal court counts as a "strike" under Initiative 593 if the court's jurisdiction were based either on an automatic decline (RCW 13.04.030(1)(e)(v) or a transfer following a hearing (RCW 13.40.110).

***"Persistent Offender"** was defined in 1993 as part of Initiative Measure No. 593. The definition of "persistent offender" requires two previous convictions "as an offender" of "most serious offenses." Each "most serious offense" must have been committed after conviction of the previous such offense. A persistent offender is sentenced to life in prison without the possibility of release, under RCW 9.94A.120(4).*

The 1996 Legislature amended the definition of "persistent offender" to include persons convicted of specified sex offenses with one previous conviction "as an offender" of one of the specified sex offenses. The second such offense must have been committed after conviction of the first.

The 1997 Legislature amended the definition of "persistent offender" to include persons convicted of additional sex offenses against children after a previous conviction of one of the specified sex offenses. The offenses added in 1997 are Rape of a Child 1 and 2, Child Molestation 1, Homicide by Abuse with sexual motivation, and Assault of a Child 1 with sexual motivation. The legislation specified that, for a conviction to be counted in determining "persistent offender" status, Rape of a Child 1 must have been committed when the offender was 16 or older, and Rape of a Child 2 must have been committed when the offender was 18 or older.

The 1997 Legislature also clarified that a prior conviction of Indecent Liberties is counted in determining "persistent offender" status under all definitions of the offense in effect since 1975, except for cases under RCW 9A.44.100(1)(c) as it existed between June 11, 1986 and July 1, 1988, where the victim was 14 or 15 years old, the offender was at least 48 months older, and the offender was in a position of authority over the victim.

***"Post-release Supervision"** was defined in 1988 in relation to the community placement program. For offenses committed on or after July 1, 2000, the term "post-release supervision" will no longer apply and all forms of supervision in the community will fall under the definition of "community custody".*

***"Risk Assessment"** was defined in 1999 as part of the Offender Accountability Act.*

***"Serious Offense"** was amended in 1987 to include federal and out-of-state convictions.*

***"Serious Violent Offense"** was expanded in 1986 to include attempts, solicitations and conspiracies to commit any of the felonies listed in the definition. Previously, the law was not clear in three areas: (1) Whether anticipatory crimes were included in this definition; (2) whether anticipatory crimes are eligible for a deadly weapon enhancement; and (3) how anticipatory crimes are to be "scored" in criminal history. The statutes in this section make*

clear that anticipatory crimes are considered the same as completed crimes for purposes of determining whether the crime is a serious violent offense, whether the crime warrants a longer sentence for a deadly weapon and/or whether to increase the offender's criminal history score." The 1997 Legislature added Manslaughter 1 to the definition of "serious violent offense."

"Sex Offense" *was added in 1986 to clarify which offenses qualify for the sex offender sentencing option and which are precluded from being considered for the First-time Offender Waiver. Anticipatory crimes are included within the definition.*

The 1990 Legislature amended the definition of "sex offense" to include crimes committed with sexual motivation.

The 1995 Legislature amended the definition of "sex offense" to include only felonies. However, a criminal attempt, solicitation or conspiracy to commit a sex offense triggers the requirement to register as a sex offender under 9A.44.130, even when the offense is classified as a gross misdemeanor.

The 1999 Legislature amended the definition of "sex offense" to exclude offenders convicted of Failure to Register as a Kidnapper, unless the original kidnapping offense was sexually motivated. Kidnapping offenders are still required to register with the county sheriff (See RCW 9A.44.130(9) and (10).

The 1999 Legislature also modified the definition of "sex offense" to include, for the purpose of "scoring" an offender's criminal history, those convictions of comparable felony sex offenses before July 1, 1976.

"Violent Offense" *was amended in 1986 to include the crime of Vehicular Assault. The Commission decided that this crime involves basically the same offender behavior as Vehicular Homicide, which is already classified as a "violent offense."*

The 1990 Legislature deleted Child Molestation 1 and Rape 2 from the specific list of "violent offenses," because those offenses were raised from Class B to Class A offenses. All Class A offenses are defined as "violent offenses."

The 1997 Legislature amended the definition of "violent offense" to include federal and out-of-state convictions.

The 1997 Legislature also added Drive-by Shooting (formerly Reckless Endangerment 1, nonviolent) to the specific list of offenses defined as "violent offenses."

"Work Crew" *eligibility was broadened in 1993, removing the language that limited the performance of civic improvement tasks to public or private nonprofit property.*

The 1999 Legislature expanded eligibility for work crew to offenders on community custody, pursuant to RCW 9.94A.205(2)(c).

RCW 9.94A.035
Classification of felonies not in Title 9A RCW.

For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter.

[1996 c 44 § 1.]

Comment

This section, added in 1996 at the Commission's request, provides a means of classifying, for purposes of the Sentencing Reform Act, felonies that are not classified in the statutes defining them. The classification system is consistent with RCW 9A.20.040 for offenses related to other felonies, and to RCW 9A.28.010 for anticipatory offenses. It is also consistent with State v. Kelley, 77 Wn. App. 66 (1995), which held that doubling the statutory maximum sentence for an offense under RCW 69.50.408 does not change the classification of the offense.

RCW 9.94A.190
Terms of more than one year or less than one year -- Where served -- Reimbursement of costs.

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the

purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95, RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.712 shall be served in a facility or institution operated, or utilized under contract, by the state.

[2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

NOTES:

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1995 c 108: See note following RCW 9.94A.030.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

See also RCW 70.48.400: "Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the Department of Corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county."

The 1986 Legislature provided that offenders with a sentence greater than a year, who also have a sentence less than a year, will serve the entire period of time in a state institution. Prior to this amendment, offenders were transferred from the state institution to a local facility to serve sentences of less than one year.

The 1995 Legislature, in creating the Drug Offender Sentencing Alternative (see RCW 9.94A.660), provided that a term of confinement imposed under that alternative must be served, regardless of length, in a state correctional facility.

RCW 9.94A.340
Equal application.

The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant.

[1983 c 115 § 5.]

RCW 9.94A.345
Timing.

Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

[2000 c 26 § 2.]

NOTES:

Intent -- 2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

RCW 9.94A.401
Introduction.

These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

[1983 c 115 § 14. Formerly RCW 9.94A.430.]

RCW 9.94A.411
Evidentiary sufficiency.

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Kidnapping

2nd Degree Kidnapping

1st Degree Assault

2nd Degree Assault

3rd Degree Assault

1st Degree Assault of a Child

2nd Degree Assault of a Child

3rd Degree Assault of a Child

1st Degree Rape

2nd Degree Rape

3rd Degree Rape

1st Degree Rape of a Child

2nd Degree Rape of a Child

3rd Degree Rape of a Child

1st Degree Robbery

2nd Degree Robbery

1st Degree Arson

1st Degree Burglary

1st Degree Extortion

2nd Degree Extortion

Indecent Liberties

Incest

Vehicular Homicide

Vehicular Assault

1st Degree Child Molestation

2nd Degree Child Molestation

3rd Degree Child Molestation

1st Degree Promoting Prostitution

Intimidating a Juror

Communication with a Minor

Intimidating a Witness

Intimidating a Public Servant

Bomb Threat (if against person)

Unlawful Imprisonment

Promoting a Suicide Attempt

Riot (if against person)

Stalking

Custodial Assault

Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)

Counterfeiting (if a violation of RCW 9.16.035(4))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson

1st Degree Escape

2nd Degree Escape

2nd Degree Burglary

1st Degree Theft

2nd Degree Theft

1st Degree Perjury

2nd Degree Perjury

1st Degree Introducing Contraband

2nd Degree Introducing Contraband

1st Degree Possession of Stolen Property

2nd Degree Possession of Stolen Property

Bribery

Bribing a Witness

Bribe received by a Witness

Bomb Threat (if against property)

1st Degree Malicious Mischief

2nd Degree Malicious Mischief

1st Degree Reckless Burning

Taking a Motor Vehicle without Authorization

Forgery

2nd Degree Promoting Prostitution

Tampering with a Witness

Trading in Public Office

Trading in Special Influence

Receiving/Granting Unlawful Compensation

Bigamy

Eluding a Pursuing Police Vehicle

Willful Failure to Return from Furlough

Escape from Community Custody

Riot (if against property)

1st Degree Theft of Livestock

2nd Degree Theft of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(A) Will significantly enhance the strength of the state's case at trial; or

(B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(A) Charging a higher degree;

(B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

[2000 c 119 § 28; 2000 c 28 § 17. Prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

NOTES:

Reviser's note: This section was amended by 2000 c 28 § 17 and by 2000 c 119 § 28, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application -- 2000 c 119: See note following RCW 26.50.021.

Technical correction bill--2000 c 28: See note following RCW 9.94A.015.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Effective date -- Savings -- Application -- 1988 c 145: See notes following RCW 9A.44.010.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Comment

Decision Not to Prosecute: This standard and the examples previously listed were taken in large measure from the 1980 Washington Association of Prosecuting Attorneys' Standards for Charging and Plea Bargaining.

The 1995 Legislature added a guideline calling for prosecutors to consult with victims or their representatives about the selection or disposition of charges, and to consider those discussions before reaching any agreement with a defendant about charging or disposition.

The 1999 Legislature added the following offenses to the list of "Crimes Against Persons:" Custodial Assault (RCW 9A.36.100); Stalking (RCW 9A.46.110); No-Contact Order Violation: Domestic Violence Pre-Trial Condition (RCW 10.99.040(4)(b) and (c)); No-Contact Order Violation: Domestic Violence Sentence Condition (RCW 10.99.050(2)); Protection Order

Violation: Domestic Violence Civil Action (RCW 26.50.110(4) and (5)); and Counterfeiting While Endangering Public Health and Safety (RCW 9.16.035(4)).

RCW 9.94A.421
Plea agreements -- Discussions -- Contents of agreements.

The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(1) Move for dismissal of other charges or counts;

(2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;

(3) Recommend a particular sentence outside of the sentence range;

(4) Agree to file a particular charge or count;

(5) Agree not to file other charges or counts; or

(6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

In a case involving a crime against persons as defined in RCW 9.94A.411, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement.

The court shall not participate in any discussions under this section.

[1995 c 288 § 1; 1981 c 137 § 8. Formerly RCW 9.94A.080.]

NOTES:

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

Pursuant to subsection (6), agreements may be reached regarding the filing or dismissal of deadly weapon allegations, the amount of restitution to be paid, whether an alternative conversion from total confinement to community service will be recommended and whether confinement shall be total or partial. These examples are not exclusive, and subsection (6) was designed to allow agreements appropriate to the specific facts of individual cases permitted under the Act. See RCW 9.94A.450, the Recommended Prosecuting Standards for Charging and Plea Dispositions.

The requirement that in no instance may the prosecutor agree not to allege prior convictions does not apply to situations in which the conviction is constitutionally invalid on its face. Similarly, it need not be alleged if the prior conviction has been previously determined through a personal restraint petition (or equivalent process) to have been unconstitutionally obtained. See State v. Ammons, 105 Wn.2d 175, 187 (1986).

The 1995 Legislature added a requirement that prosecutors consult with the victims of violent offenses about plea agreements in such cases.

A defendant may not assert a cruel and unusual punishment claim or an equal protection claim in challenging a standard range sentence negotiated as part of a plea agreement. A plea agreement for a standard range sentence operates as a waiver of nonjurisdictional challenges to the sentence. See State v. Moton, 976 P.2d 1286 (1999).

RCW 9.94A.431
Plea agreements -- Information to court -- Approval or disapproval -- Sentencing judge not bound.

(1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.421, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.411, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea.

[1995 c 288 § 2; 1984 c 209 § 4; 1981 c 137 § 9. Formerly RCW 9.94A.090.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

Subsection (1) gives the judge hearing a defendant's plea of guilty the authority to void the plea agreement upon which it is based if it is not consistent with the interests of justice and the prosecuting standards. This includes the authority to deny an amendment of the information. CrR 2.1(e).

A sentencing judge is not bound by the recommendations of any party, even if that judge also accepted the defendant's plea of guilty. This is consistent with Washington law preceding implementation of the Sentencing Reform Act.

The 1995 Legislature added a requirement that prosecutors inform the sentencing court whether the victims of violent crimes have expressed any objections or comments on the plea agreement.

RCW 9.94A.441
Plea agreements -- Criminal history.

The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing.

[1981 c 137 § 10. Formerly RCW 9.94A.100.]

NOTES:

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

This section does not violate a defendant's freedom against self-incrimination. State v. Ammons, 105 Wn.2d 175, 183-184 (1986).

RCW 9.94A.450
Plea dispositions.

STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(a) Evidentiary problems which make conviction on the original charges doubtful;

(b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(c) A request by the victim when it is not the result of pressure from the defendant;

(d) The discovery of facts which mitigate the seriousness of the defendant's conduct;

(e) The correction of errors in the initial charging decision;

(f) The defendant's history with respect to criminal activity;

(g) The nature and seriousness of the offense or offenses charged;

(h) The probable effect on witnesses.

[1983 c 115 § 16.]

RCW 9.94A.460
Sentence recommendations.

STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement.

[1983 c 115 § 17.]

RCW 9.94A.470
Armed offenders.

Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.411(2), any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.602, any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411(2) as crimes against persons.

[2002 c 290 § 14; 1995 c 129 § 4 (Initiative Measure No. 159).]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Findings and intent -- Short title -- Severability -- Captions not law -- 1995 c 129: See notes following RCW 9.94A.510.

RCW 9.94A.475
Plea agreements and sentences for certain offenders -- Public records.

Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.602;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both; and/or

(5) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by

shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

[2002 c 290 § 15; 1997 c 338 § 48; 1995 c 129 § 5 (Initiative Measure No. 159). Formerly RCW 9.94A.103.]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Findings and intent -- Short title -- Severability -- Captions not law -- 1995 c 129: See notes following RCW 9.94A.510.

Comment

Initiative Measure No. 159 added this section, requiring the maintenance as public records of all plea or recommended sentencing agreements involving violent offenses, most serious offenses or felonies involving deadly weapons.

RCW 9.94A.480
Judicial records for sentences of certain offenders.

(1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The sentencing guidelines commission shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section and shall compile a yearly and cumulative judicial record of each sentencing judge in regards to his or her sentencing practices for any and all felony crimes involving:

(a) Any violent offense as defined in this chapter;

(b) Any most serious offense as defined in this chapter;

(c) Any felony with any deadly weapon special verdict under RCW 9.94A.602;

(d) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both; and/or

(e) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

(3) The sentencing guidelines commission shall compare each individual judge's sentencing practices to the standard or presumptive sentence range for any and all felony crimes listed in subsection (2) of this section for the appropriate offense level as defined in RCW 9.94A.515 or 9.94A.518, offender score as defined in RCW 9.94A.525, and any applicable deadly weapon enhancements as defined in RCW 9.94A.533 (3) or (4), or both. These comparative records shall be retained and made available to the public for review in a current, newly created or reworked official published document by the sentencing guidelines commission.

(4) Any and all felony sentences which are either above or below the standard or presumptive sentence range in subsection (3) of this section shall also mark whether the prosecuting attorney in the case also recommended a similar sentence, if any, which was either above or below the presumptive sentence range and shall also indicate if the sentence was in conjunction with an approved alternative sentencing option including a first-time offender waiver, sex offender sentencing alternative, or other prescribed sentencing option.

(5) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the sentencing guidelines commission as required in subsection (2) of this section, the sentencing guidelines commission shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the sentencing guidelines commission.

[2002 c 290 § 16; 1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159). Formerly RCW 9.94A.105.]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Findings and intent -- Short title -- Severability -- Captions not law -- 1995 c 129: See notes following RCW 9.94A.510.

Comment

Initiative Measure No. 159 added this section, requiring that every felony Judgment and Sentence document includes all recommended plea or sentencing agreements, the printed name of the sentencing judge and space for the judge's reasons to impose an exceptional sentence. Records of sentences above or below the standard range must reveal whether the prosecuting attorney recommended a similar sentence.

The Sentencing Guidelines Commission is required to compile annual and cumulative records of each judge's sentencing practices involving violent offenses, most serious offenses and felonies involving deadly weapons. The Commission is to compare each judge's sentencing practices to the standard range for each of these offenses, and to publish these comparative records.

RCW 9.94A.500
Sentencing hearing -- Presentencing procedures -- Disclosure of mental health services information.

(1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50, RCW or a criminal solicitation to commit such a violation under chapter 9A.28, RCW where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall

be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information related to mental health services, as defined in RCW 71.05.445 and *71.34.225, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information related to mental health services as authorized by RCW 71.05.445, *71.34.225, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69, or 7.69A, RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services.

[2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

NOTES:

***Reviser's note:** RCW 71.34.225 was recodified as RCW 71.34.345 pursuant to 2005 c 371 § 6.

Intent -- 2000 c 75: See note following RCW 71.05.445.

Severability -- 1999 c 197: See note following RCW 9.94A.030.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Intent -- 1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

(1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and

(2) Community corrections officers to work with community mental health providers to

support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Severability -- Effective date -- 1985 c 443: See notes following RCW 7.69.010.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

This section is procedurally implemented through CrR 7.1. Relevant information for purposes of sentencing is to be submitted through written presentence reports. Information set forth in the presentence reports of the prosecuting attorney and the Department of Corrections will be considered admitted, unless specifically controverted by the defendant. State v. Ammons, 105 Wn.2d 175, 184 (1986).

A comprehensive discussion regarding the determination of a defendant's criminal history at the sentencing hearing is contained in State v. Ammons, 105 Wn.2d 175 (1986). See RCW 9.94A.370 for a discussion of other disputed facts that may affect the defendant's sentence.

The 1988 Legislature directed the court to order presentence reports on all offenders convicted of felony sex offenses.

The 1998 Legislature directed the courts to order the Department of Corrections to complete presentence reports before imposing sentences where the court determines the offender may be a mentally ill person as defined in RCW 71.24.025.

The 1999 Legislature authorized courts to order the Department of Corrections to complete presentence risk assessment reports for offenders and directed courts to consider risk assessment reports as part of the determination of what sentence to impose, although sentences may be entered without considering a risk assessment report. The 1999 Legislature also mandated presentence chemical dependency screening reports to be completed for all offenders violating the Uniform Controlled Substances Act (RCW 69.50). A court may specifically waive a chemical dependency screening in such cases. In other cases (non-drug offenses), a court may order a chemical dependency screening where the court finds that a chemical dependency contributed to the crime.

RCW 9.94A.501
Risk assessment -- Risk categories -- Department must supervise specified offenders.
(Effective July 24, 2005.) (Expires July 1, 2010.)

(1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or

(b) Regardless of the offender's or probationer's risk category if:

(i) The offender's or probationer's current conviction is for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406

(delivery of a controlled substance to a minor);

(iii) The conditions of the offender's community custody, community placement, or community supervision or the probationer's supervision include chemical dependency treatment;

(iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

(v) The offender is subject to supervision pursuant to RCW 9.94A.745.

(3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required under subsection (2) of this section.

(4) This section expires July 1, 2010.

[2005 c 362 § 1; 2003 c 379 § 3.]

NOTES:

Effective date -- 2005 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services -- County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

RCW 9.94A.505
Sentences.

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

(iv) RCW 9.94A.545, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.570, relating to persistent offenders;

(vi) RCW 9.94A.540, relating to mandatory minimum terms;

(vii) RCW 9.94A.650, relating to the first-time offender waiver;

(viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(x) RCW 9.94A.712, relating to certain sex offenses;

(xi) RCW 9.94A.535, relating to exceptional sentences;

(xii) RCW 9.94A.589, relating to consecutive and concurrent sentences.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and9.94A.753 (4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20, RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

[2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2. Prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

NOTES:

Reviser's note: This section was amended by 2002 c 175 § 6, 2002 c 289 § 6, and by 2002 c 290 § 17, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Severability -- Effective date -- 2002 c 289: See notes following RCW 43.43.753.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent -- 2001 c 10: "It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A, RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A, RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act." [2001 c 10 § 1.]

Effective date -- 2001 c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 10 § 7.]

Finding -- Intent -- 2000 c 226: "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

Severability -- 2000 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 226 § 6.]

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Drug offender options -- Report: "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

Severability -- 1999 c 197: See note following RCW 9.94A.030.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Intent -- 1998 c 260: See note following RCW 9.94A.500.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Finding -- 1996 c 275: "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 § 1.]

Application -- 1996 c 275 §§ 1-5: "Sections 1 through 5, chapter 275, Laws of 1996 apply to crimes committed on or after June 6, 1996." [1996 c 275 § 14.]

Severability -- 1996 c 199: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 199 § 9.]

Effective date -- 1995 c 108: See note following RCW 9.94A.030.

Severability -- Short title -- Captions -- 1994 c 1: See notes following RCW 9.94A.555.

Severability -- Application -- 1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Applicability -- 1988 c 143 §§ 21-24: "Increased sanctions authorized by sections 21 through 24 of this act are applicable only to those persons committing offenses after March 21, 1988." [1988 c 143 § 25.]

Effective date -- 1987 c 402: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 402 § 3.]

Effective date -- 1986 c 301 § 4: "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 § 8.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1983 c 163: "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 § 7.]

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

RCW 9.94A.505(6) codifies the constitutional requirement that offenders receive credit for time served prior to sentencing. See State v. Phelan, 100 Wn.2d 508, 671 P.2d 1212 (1983).

The 1988 Legislature directed that restitution to victims shall be the first payment of monetary obligations. The Legislature also clarified that the Department of Corrections is responsible for supervising payment of monetary obligations, and if the court does not set a schedule for payments, the Department can set one.

The 1999 Legislature also authorized courts to order certain domestic violence offenders to participate in domestic violence perpetrator programs as part of their term of supervision in the community. See RCW 9.94A.505(11)

RCW 9.94A.510 — Adult Felony Sentencing Grid

Seriousness Level	Offender Score									
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9 or More**
XVI	Life Sentence Without Parole/Death Penalty									
XV	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XIV	14y 4m 123 - 220	15y 4m 134 - 234	16y 2m 144 - 244	17y 154 - 254	17y 11m 165 - 265	18y 9m 175 - 275	20y 5m 195 - 295	22y 2m 216 - 316	25y 7m 257 - 357	29y 298 - 397
XIII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 165 - 219	17y 175 - 233	19y 195 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XII	9y 93 - 123	9y 11m 102 - 136	10y 9m 111 - 147	11y 8m 120 - 160	12y 6m 129 - 171	13y 5m 138 - 184	15y 9m 162 - 216	17y 3m 178 - 236	20y 3m 209 - 277	23y 3m 240 - 318
XI	7y 6m 78 - 102	8y 4m 86 - 114	9y 2m 95 - 125	9y 11m 102 - 136	10y 9m 111 - 147	11y 7m 120 - 158	14y 2m 146 - 194	15y 5m 159 - 211	17y 11m 185 - 245	20y 5m 210 - 280
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	45d 0 - 90 (Days)	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	30d 0 - 60 (Days)	45d 0 - 90 (Days)	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day.

[2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW 9.94A.310.]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1998 c 211: See note following RCW 46.61.5055.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Findings and intent -- 1995 c 129: "(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." [1995 c 129 § 1 (Initiative Measure No. 159).]

Short title -- 1995 c 129: "This act shall be known and cited as the hard time for armed crime act." [1995 c 129 § 21 (Initiative Measure No. 159).]

Severability -- 1995 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 129 § 22 (Initiative Measure No. 159).]

Captions not law -- 1995 c 129: "Captions as used in this act do not constitute any part of the law." [1995 c 129 § 23 (Initiative Measure No. 159).]

Finding -- Intent -- Severability -- Effective dates -- Contingent expiration date -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Application -- 1989 c 271 §§ 101-111: "Sections 101-111 of this act apply to crimes committed on or after July 1, 1989." [1989 c 271 § 114.]

Severability -- 1989 c 271: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 271 § 606.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

The 1986 amendments provided that the 12-month deadly weapon penalty applies to those offenses defined in RCW 9.94A.030 as drug offenses, instead of applying only to Delivery or Possession of a Controlled Substance with Intent to Deliver. The term "drug offense," as defined

in the SRA, excludes simple possession, forged prescriptions and violations of the Legend Drug Act.

The 1986 revisions also clarified that the deadly weapon penalties apply to anticipatory offenses.

The 1989 Legislature added two enhancements for some drug crimes committed in certain locations: (1) violations of RCW 69.50.401(a) committed within 1,000 feet of a school or school bus zone, and (2) violations of RCW 69.50.401(a) or (d) committed within a county jail or state correctional facility.

The 1990 Legislature amended the sentencing grid to add a new Level XII, and renumber Levels XII through XIV. The sentence ranges in Level XI were increased.

The 1990 Legislature amended the enhancement for certain drug crimes near schools to also apply to Manufacture, Delivery, and Possession with Intent to Deliver in parks, public transit vehicles and transit stop shelters (RCW 69.50.435).

The 1992 Legislature added Assault of a Child 2 to the crimes eligible for deadly weapon penalties.

The 1994 Legislature amended subsection (4)(c) to apply the previous 12-month deadly weapon enhancement to all violent offenses not subject to a longer enhancement. This was repealed and replaced in 1995 by Initiative 159.

The enactment of Initiative Measure No. 159 by the 1995 Legislature split the previous deadly weapon enhancement into separate enhancements for firearms and for other deadly weapons, and broadened their application to all felonies except those in which using a firearm is an element of the offense. The enhancements double when the offender has previously (but on or after July 23, 1995) been sentenced to a deadly weapon enhancement under (3) or (4). The enhancements must run consecutively to any other sentence, as long as the period of total confinement does not exceed the statutory maximum for the offense. The amendments increased the enhancement (where the weapon is not a firearm) for Burglary 1 from 18 months to two years and reduced the enhancement for Theft of Livestock 2 from one year to six months.

Although the 1995 amendments to subsections (3) and (4) in Initiative 159 prohibit weapon enhancements from running concurrently to other sentencing provisions, the Initiative did not amend RCW 9.94A.400, which provides for concurrent sentencing of multiple counts except under circumstances specified in that section.

Subsections (3) and (4) limit the total sentence for each count to the statutory maximum, even with weapon enhancements. However, it is unclear whether the maximum consists of the entire weapon enhancement plus the remainder of the base sentence, or of the base sentence plus whatever part of the weapon enhancement remains within the maximum. This issue is especially important in multiple-count cases, where the statutory maximum for the most serious count would limit the total sentence in the absence of weapon enhancements, but may not if weapon enhancements are computed consecutively.

The 1996 Legislature increased from 15 months to 18 months the enhancement for Manufacture,

Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine in a county jail or state correctional facility. The Legislature also authorized local governments to designate additional "drug free zones" at or around defined "civic centers," under RCW 69.50.435, for purposes of the 24-month enhancement for drug offenses committed within such areas.

The 1998 Legislature clarified that when an offender is being sentenced for more than one offense, the firearm enhancement or enhancements and or deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to the enhancement. This takes effect for crimes committed on or after June 11, 1998.

The 1998 Legislature also clarified that for all offenses sentenced under RCW 9.94A.310, all firearm or deadly weapon enhancements run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements. This takes effect for crimes committed on or after June 11, 1998.

The 1998 Legislature required that an additional two years be added to the presumptive sentence for Vehicular Homicide committed while under the Influence of Intoxicating Liquor or any Drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

The 1998 Legislature required that if the firearm enhancement or the deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum. This takes effect for crimes committed on or after June 11, 1998.

The Supreme Court of Washington in Post Sentencing Review of Charles, 135 Wn.2d 239 (1998), ruled that when two or more offenses each carry firearm enhancements, the determination of whether multiple current sentences are to run concurrently or consecutively is governed by RCW 9.94A.400. (See 9.94A.589 for current rule.)

In State v. Barajas, 88 Wn. App. 387 (1997), the Court of Appeals ruled that when a convicted drug offender is subject to both RCW 69.50.435 (which doubles the maximum sentence that may be imposed for a drug offense committed in or near a public place or facility as specified by the statute) and RCW 9.94A.310(3) (which mandates enhanced sentences for offenses committed while armed with a firearm), the maximum sentence on which to determine the length of the firearm enhancement is the statutory maximum for the offenses as doubled by RCW 69.50.435.

The 1997 Legislature increased the maximum term of total confinement in the standard range for Level XIII. However, the minimum term in that range applied only to sentences for Murder 2 because the Legislature amended limiting language in RCW 9.94A.040(4)(b) only for Murder 2 offenses. The new standard ranges for Murder 2 applied to crimes committed on or after July 27, 1997. The 1999 Legislature resolved the conflict within Level XIII that arose after the 1997 legislative session. A new Level XIV was created for Murder 2 only, with its unique "range widths" as outlined in 9.94A.040(4)(b). The "range widths" for the offenses remaining at Level XIII were returned to their pre-1997 status, and offenses previously at Levels XIV and XV were moved up to Level XV and a new Level XVI, respectively (for offenses committed on or after July 25, 1999).

The 1999 Legislature provided exceptions to serving mandatory minimum sentences in total confinement for offenders granted an "extraordinary medical placement" authorized under RCW 9.94A.150(4).

RCW 9.94A.515
Table 2 -- Crimes included within each seriousness level. ***(Effective July 24, 2005.)***

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)

X Child Molestation 1 (RCW 9A.44.083)

Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))

Kidnapping 1 (RCW 9A.40.020)

Leading Organized Crime (RCW 9A.82.060(1)(a))

Malicious explosion 3 (RCW 70.74.280(3))

Sexually Violent Predator Escape (RCW 9A.76.115)

IX Assault of a Child 2 (RCW 9A.36.130)

Explosive devices prohibited (RCW 70.74.180)

Hit and Run--Death (RCW 46.52.020(4)(a))

Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

Malicious placement of an explosive 2 (RCW 70.74.270(2))

Robbery 1 (RCW 9A.56.200)

Sexual Exploitation (RCW 9.68A.040)

Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)

VIII Arson 1 (RCW 9A.48.020)

Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)

Manslaughter 2 (RCW 9A.32.070)

Promoting Prostitution 1 (RCW 9A.88.070)

Theft of Ammonia (RCW

69.55.010)

Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)

VII Burglary 1 (RCW 9A.52.020)

Child Molestation 2 (RCW 9A.44.086)

Civil Disorder Training (RCW 9A.48.120)

Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)

Drive-by Shooting (RCW 9A.36.045)

Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))

Introducing Contraband 1 (RCW 9A.76.140)

Malicious placement of an explosive 3 (RCW 70.74.270(3))

Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)

Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)

Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))

Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)

Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)

VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))

Bribery (RCW 9A.68.010)

	Incest 1 (RCW 9A.64.020(1))
	Intimidating a Judge (RCW 9A.72.160)
	Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
	Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
	Rape of a Child 3 (RCW 9A.44.079)
	Theft of a Firearm (RCW 9A.56.300)
	Unlawful Storage of Ammonia (RCW 69.55.020)
V	Abandonment of dependent person 1 (RCW 9A.42.060)
	Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
	Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
	Child Molestation 3 (RCW 9A.44.089)
	Criminal Mistreatment 1 (RCW 9A.42.020)
	Custodial Sexual Misconduct 1 (RCW 9A.44.160)
	Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
	Extortion 1 (RCW 9A.56.120)
	Extortionate Extension of Credit (RCW 9A.82.020)
	Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
	Incest 2 (RCW 9A.64.020(2))
	Kidnapping 2 (RCW 9A.40.030)
	Perjury 1 (RCW 9A.72.020)
	Persistent prison misbehavior (RCW 9.94.070)

	Possession of a Stolen Firearm (RCW 9A.56.310)
	Rape 3 (RCW 9A.44.060)
	Rendering Criminal Assistance 1 (RCW 9A.76.070)
	Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
	Sexually Violating Human Remains (RCW 9A.44.105)
	Stalking (RCW 9A.46.110)
	Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
IV	Arson 2 (RCW 9A.48.030)
	Assault 2 (RCW 9A.36.021)
	Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
	Assault by Watercraft (RCW 79A.60.060)
	Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
	Cheating 1 (RCW 9.46.1961)
	Commercial Bribery (RCW 9A.68.060)
	Counterfeiting (RCW 9.16.035(4))
	Endangerment with a Controlled Substance (RCW 9A.42.100)
	Escape 1 (RCW 9A.76.110)
	Hit and Run -- Injury (RCW 46.52.020(4)(b))
	Hit and Run with Vessel -- Injury Accident (RCW 79A.60.200(3))
	Identity Theft 1 (RCW 9.35.020(2))
	Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
	Influencing Outcome of Sporting Event (RCW 9A.82.070)
	Malicious Harassment (RCW 9A.36.080)

	Residential Burglary (RCW 9A.52.025)
	Robbery 2 (RCW 9A.56.210)
	Theft of Livestock 1 (RCW 9A.56.080)
	Threats to Bomb (RCW 9.61.160)
	Trafficking in Stolen Property 1 (RCW 9A.82.050)
	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
	Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
	Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
	Unlawful transaction of insurance business (RCW 48.15.023(3))
	Unlicensed practice as an insurance professional (RCW 48.17.063(3))
	Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
	Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
	Willful Failure to Return from Furlough (*RCW 72.66.060)
III	Abandonment of dependent person 2 (RCW 9A.42.070)
	Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
	Assault of a Child 3 (RCW 9A.36.140)
	Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
	Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Criminal Mistreatment 2 (RCW 9A.42.030)

Custodial Assault (RCW 9A.36.100)

Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW 9A.76.180)

Introducing Contraband 2 (RCW 9A.76.150)

Malicious Injury to Railroad Property (RCW 81.60.070)

Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)

Patronizing a Juvenile Prostitute (RCW 9.68A.100)

Perjury 2 (RCW 9A.72.030)

Possession of Incendiary Device (RCW 9.40.120)

Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)

Promoting Prostitution 2 (RCW 9A.88.080)

Securities Act violation (RCW 21.20.400)

Tampering with a Witness (RCW 9A.72.120)

Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))

Theft of Livestock 2 (RCW

	9A.56.083)
	Trafficking in Stolen Property 2 (RCW 9A.82.055)
	Unlawful Imprisonment (RCW 9A.40.040)
	Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
	Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
	Willful Failure to Return from Work Release (*RCW 72.65.070)
II	Computer Trespass 1 (RCW 9A.52.110)
	Counterfeiting (RCW 9.16.035(3))
	Escape from Community Custody (RCW 72.09.310)
	Health Care False Claims (RCW 48.80.030)
	Identity Theft 2 (RCW 9.35.020(3))
	Improperly Obtaining Financial Information (RCW 9.35.010)
	Malicious Mischief 1 (RCW 9A.48.070)
	Possession of Stolen Property 1 (RCW 9A.56.150)
	Theft 1 (RCW 9A.56.030)
	Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
	Trafficking in Insurance Claims (RCW 48.30A.015)
	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
	Unlawful Practice of Law (RCW 2.48.180)
	Unlicensed Practice of a

	Profession or Business (RCW 18.130.190(7))
I	Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
	False Verification for Welfare (RCW 74.08.055)
	Forgery (RCW 9A.60.020)
	Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
	Malicious Mischief 2 (RCW 9A.48.080)
	Mineral Trespass (RCW 78.44.330)
	Possession of Stolen Property 2 (RCW 9A.56.160)
	Reckless Burning 1 (RCW 9A.48.040)
	Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
	Theft 2 (RCW 9A.56.040)
	Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
	Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
	Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
	Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
	Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
	Unlawful Possession of Payment Instruments (RCW 9A.56.320)
	Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
	Unlawful Production of Payment

Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW 9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

[2005 c 458 § 2; 2005 c 183 § 9. Prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

NOTES:

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2005 c 183 § 9 and by 2005 c 458 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability -- 2004 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

Effective date -- 2004 c 176: "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

Expiration date -- 2004 c 94 § 2: "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

Severability -- Effective dates--2004 c 94: See notes following RCW 9.61.260.

Effective date -- 2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Expiration date -- 2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

Effective date -- 2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Expiration date -- 2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability -- Part headings not law -- 2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date -- 2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Expiration date -- 2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Effective date -- 2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Expiration date -- 2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability -- 2003 c 250: See note following RCW 48.01.080.

Effective date -- 2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Expiration date -- 2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Expiration date -- 2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Study and report -- 2002 c 324: See note following RCW 9A.56.070.

Effective date -- 2002 c 290 §§ 7-11 and 14-23: "Sections 7 through 11 and 14 through 23 of this act take effect July 1, 2003." [2003 c 379 § 10; 2002 c 290 § 31.]

Effective date -- 2002 c 290 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2002, and apply to crimes committed on or after July 1, 2002." [2002 c 290 § 29.]

Expiration date -- 2002 c 290 § 2: "Section 2 of this act expires July 1, 2003." [2003 c 379 § 9; 2002 c 290 § 30.]

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Effective date -- 2002 c 229: See note following RCW 9A.42.100.

Effective date -- 2002 c 134: See note following RCW 69.50.440.

Effective date -- 2002 c 133: See note following RCW 69.55.010.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Purpose -- Effective date -- 2001 c 310: See notes following RCW 2.48.180.

Effective dates -- 2001 c 287: See note following RCW 9A.76.115.

Purpose -- Effective date -- 2001 c 224: See notes following RCW 9A.68.060.

Purpose -- Effective date -- 2001 c 222: See notes following RCW 9A.82.001.

Captions not law -- 2001 c 217: See note following RCW 9.35.005.

Purpose -- Effective date -- 2001 c 207: See notes following RCW 18.130.190.

Severability -- 2000 c 225: See note following RCW 69.55.010.

Effective date -- 2000 c 119 § 17: "Section 17 of this act takes effect July 1, 2000." [2000 c 119 § 30.]

Application -- 2000 c 119: See note following RCW 26.50.021.

Alphabetization -- 1999 c 352: "The code reviser shall alphabetize the offenses within each seriousness level in RCW 9.94A.320, including any offenses added in the 1999 legislative session." [1999 c 352 § 6.]

Application -- 1999 c 352 §§ 3-5: "The amendments made by sections 3 through 5, chapter 352, Laws of 1999 shall apply to offenses committed on or after July 25, 1999, except that the amendments made by chapter 352, Laws of 1999 to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000." [1999 c 352 § 7.]

Application -- Effective date -- Severability -- 1998 c 290: See notes following RCW 69.50.401.

Application -- 1998 c 78: "This act applies to crimes committed on or after July 1, 1998." [1998 c 78 § 2.]

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Findings -- Intent -- Severability -- 1997 c 266: See notes following RCW 28A.600.455.

Severability -- 1996 c 302: See note following RCW 9A.42.010.

Effective date -- 1995 c 285: See RCW 48.30A.900.

Findings and intent -- Short title -- Severability -- Captions not law -- 1995 c 129: See notes following RCW 9.94A.510.

Contingent expiration date -- 1994 sp.s. c 7: See note following RCW 43.70.540.

Finding -- Intent -- Severability -- Effective dates -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Short title -- Effective date -- 1994 c 275: See notes following RCW 46.04.015.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date -- 1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Finding -- Intent -- 1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Application -- 1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Application -- 1989 c 99: "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]

Effective date -- 1989 c 99: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]

Effective date -- Savings -- Application -- 1988 c 145: See notes following RCW 9A.44.010.

Effective date -- Application -- 1987 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

Crime Label: Offense seriousness is established by the actual crime of conviction. The crime of conviction is therefore far more significant in determining a sentence than under the former indeterminate system.

Crime Ranking: One of the most significant and time-consuming decisions made by the Commission was its ranking of crimes by seriousness. The three mandatory minimum sentences originally established by the Sentencing Reform Act (First Degree Murder, First Degree Assault, First Degree Rape) served as bench marks for the Commission's work. The Commission was also assisted by the general felony classifications established by the Legislature (classes A, B and C felonies-RCW 9A.20.020). The Commission decided that given the law's emphasis on violent crimes, the seriousness levels needed to reflect this priority. Certain Class C felonies were eventually ranked higher than some Class B felonies because they constituted a crime against a person.

Offense Date: The date of the offense is important because it establishes whether the guidelines apply to a particular offender's case. If the date of offense is on or before June 30, 1984, the Indeterminate Sentence Review Board and its successors must make decisions with reference to the purposes, standards, and ranges of the Sentencing Reform Act and the minimum term recommendations of the sentencing judge and prosecuting attorney. See In Re Myers, 105 Wn.2d 257 (1986). The date of the offense also influences what portion of an offender's juvenile record will be used to calculate criminal history.

Ranked Felonies: The most common felonies have been included in the Seriousness Level Table. The Commission decided not to rank certain felonies that seldom occur. The Commission will continue to recommend adjustments in seriousness levels as new felonies are created by the Legislature. If a significant number of persons are convicted of offenses not included in the Seriousness Level table, the Commission will recommend to the Legislature ranking those offenses at the appropriate seriousness levels. In 1999, the Commission recommended, and the Legislature enacted, legislation that ranked certain previously unranked felonies on the sentencing grid.

The 1990 Legislature created an additional seriousness level at Level XI, and renumbered Levels XI through XIV, making these Levels XII through XV.
The 1994 Legislature created a new Class C felony offense, Theft of a Firearm (RCW 9A.56.300) at Level V, and increased the severity of Reckless Endangerment 1 (RCW 9A.36.045) from Level

II to Level V. These amendments to this section were repealed and replaced in 1995 by Initiative Measure No. 159.

The 1994 Legislature increased the severity level of Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.520) from Level VIII to Level IX. Vehicular Homicide by Operating a Vehicle in a Reckless Manner remains at Level VIII.

The enactment of Initiative Measure No. 159 by the 1995 Legislature made numerous changes in definitions and seriousness levels of felonies involving firearms:

- *Increased the seriousness level of Reckless Endangerment 1 from Level V to Level VII.*
- *Expanded the definition of Burglary 1 to cover entry into a non-residential building.*
- *Increased the seriousness level of Theft of a Firearm from a Class C felony at Level V to a Class B felony at Level VI.*
- *Created the Class B felony of Possessing a Stolen Firearm at Level V.*
- *Narrowed the definitions of Theft and Possession of Stolen Property to exclude Theft or Possession of a Firearm.*
- *Created two degrees of Unlawful Possession of a Firearm. Unlawful Possession of a Firearm 1 is a Class B felony at Level VII. Unlawful Possession of a Firearm 2 is a Class C felony at Level III. See RCW 9.41.040.*
- *Authorized separate convictions for Theft of a Firearm, Possession of a Stolen Firearm, and Unlawful Possession of a Firearm arising from the same actions, required that sentences for each of these offenses run consecutively, and provided that each firearm constitutes a separate offense.*
- *Expanded the definition of Aggravated Murder 1, subject to the death penalty, to include gang-related murders, "drive-by" shootings and murders to avoid prosecution as a persistent ("third strike") offender.*

The 1995 Legislature created the Class C felony offense of Persistent Prison Misbehavior, ranked at Level V (see RCW 9.94.070).

The 1995 Legislature created several new felony offenses: Commercial Bribery (Class B at Level IV, see RCW 9A.68.060), Unlawful Practice of Law (Class C at Level II after the first violation, see RCW 2.48.180), Trafficking in Insurance Claims (Class C at Level II after the first violation, see RCW 48.30A.015), and Unlicensed Practice of a Profession or Business (Class C at Level II after the first violation, see RCW 18.130.190).
Health Care False Claims, a Class C felony, was ranked at Level II in 1995 (see RCW 48.80.030).

The 1996 Legislature created the following new ranked offenses: Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine, a Class B felony at Level VIII; Hit and Run with Vessel - Injury Accident, a Class C felony at Level IV; Abandonment of a Dependent Person 1, a Class B felony at Level V; and Abandonment of a Dependent Person 2, a Class C felony at Level III.

The 1997 Legislature increased the seriousness of Rape 1 and Rape of a Child 1 to Level XII, Rape 2 and Rape of a Child 2 to Level XI, and Indecent Liberties with force to Level X. The

Legislature also increased the seriousness of Manslaughter 1 to Level XI and Manslaughter 2 to Level VIII.

The 1997 Legislature added new offenses relating to explosives and imitation explosives at Levels VI, VII, IX, X, XII, XIII and XIV.

The 1997 Legislature also added new felonies: Criminal Gang Intimidation at Level III, and Theft of Rental Property at Levels I and II. The Legislature also redesignated Reckless Endangerment 1 (at Level VII) as "Drive-by Shooting."

The 1998 Legislature added new felonies: Homicide by Watercraft, by being under the Influence of Intoxicating Liquor or any Drug at Level IX; Homicide by Watercraft, by the Operation of any Vessel in a Reckless Manner at Level VIII; Homicide by Watercraft, by Disregard for the Safety of Others at Level VII; and Assault by Watercraft at Level IV.

The 1998 Legislature also enacted and ranked three new felonies involving the drug Flunitrazepam (commonly known as Rohypnol). The Possession of Flunitrazepam is ranked at Level II (RCW 69.50.401(d)). The Manufacture, Delivery or Possession with Intent to Deliver Flunitrazepam is ranked at Level VI (RCW 69.50.401(1)(iii) through (v)). The Delivery of Flunitrazepam by a Person over 18 Years of Age to a Person less than 18 Years of Age is ranked at Level X (RCW 69.50.406).

In addition, the 1998 Legislature increased the seriousness level of Manufacture, Delivery or Possession with Intent to Deliver Amphetamine from Level IV to Level VIII (RCW 69.50.401(a)(1)(ii)) and increased the seriousness level for Manufacturing Methamphetamine from Level VIII to Level X (RCW 69.50.401(a)(1)(ii)).

The 1999 Legislature amended Table 2 in RCW 9.94A.320 to add Seriousness Level XVI and to adjust the list of crimes in Levels XIII, XIV, XV and XVI to correspond to the 1999 amendments to the sentencing grid in RCW 9.94A.310.

The 1999 Legislature ranked some previously unranked felonies and created some new felonies, and listed them accordingly by Seriousness Level in Table 2 of RCW 9.94A.320, including: Over 18 and Deliver Methamphetamine to Persons Under 18 at Level X (RCW 69.50.406); Use of a Machine Gun in Commission of a Felony at Level VII (RCW 9.41.225); Custodial Sexual Misconduct 1 at Level V (RCW 9A.44.160); Stalking (on or after July 1, 2000) at Level V (RCW 9A.46.110); No-Contact Order Violation: Domestic Violence Pre-Trial Condition (on or after July 1, 2000) at Level V (RCW 10.99.040(4)(b) and (c)); No-Contact Order Violation: Domestic Violence Sentence Condition (on or after July 1, 2000) at Level V (RCW 10.99.050(2)); Protection Order Violation: Domestic Violence Civil Action (on or after July 1, 2000) at Level V (RCW 26.50.110(4) and (5)); Indecent Exposure to Person Under Age 14 (repeat offense or with previous sex offense) at Level IV (RCW 9A.88.010); Counterfeiting While Endangering Public Health and Safety at Level IV (RCW 9.16.035(4)); Maintaining a Dwelling or Place for Controlled Substances at Level III (RCW 69.50.402(a)(6)); Malicious Injury to Railroad Property at Level III (RCW 81.60.070); Possession of an Incendiary Device at Level III (RCW 9.40.120); Possession of a Machine Gun or Short-Barreled Shotgun or Rifle at Level III (RCW 9.41.190); Telephone Harassment (subsequent conviction or threat of death) at Level III (RCW 9.61.230); Unlawful Use of Building for Drug Purposes at Level III (RCW 69.53.010); and Counterfeiting (with two or more

previous convictions and more than 1000 counterfeit items with a retail value of $10,000 or more) at Level I (RCW 9.16.035(3)).

RCW 9.94A.517 Table 3—Drug offense sentencing grid.

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9+
Level III	51 to 68 Months	68+ to 100 Months	100+ to 120 Months
Level II	12+ to 20 Months	20+ to 60 Months	60+ to 120 Months
Level I	0 to 6 Months	6+ to 18 Months	12+ to 24 Months

References to months represent the standard sentence ranges. 12+ equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under RCW 2.28.170.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment.

[2002 c 290 § 8.]

NOTES:

Intent -- 2002 c 290: "It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature." [2002 c 290 § 1.]

Effectiveness report: "The Washington state institute for public policy shall evaluate the effectiveness of the drug offense sentencing grid in reducing recidivism and its financial impact. The Washington state institute for public policy shall present a preliminary report to the

legislature by December 1, 2007, and shall present a final report regarding long-term recidivism and its financial impacts to the legislature by December 1, 2008." [2002 c 290 § 24.]

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

RCW 9.94A.518
Table 4 -- Drug offenses seriousness level.

TABLE 4
DRUG OFFENSES

INCLUDED WITHIN EACH SERIOUSNESS LEVEL

III Any felony offense under chapter 69.50, RCW with a deadly weapon special verdict under RCW 9.94A.602

Controlled Substance Homicide (RCW 69.50.415)

Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

Involving a minor in drug dealing (RCW 69.50.4015)

Manufacture of methamphetamine (RCW 69.50.401(2)(b))

Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine * (RCW 69.50.440)

Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

II Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011)

Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b))

Delivery of a material in lieu of a controlled substance (RCW 69.50.4012)

Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f))

Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b))

Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a))

	Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e))
	Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
I	Forged Prescription (RCW 69.41.020)
	Forged Prescription for a Controlled Substance (RCW 69.50.403)
	Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c))
	Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013)
	Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013)
	Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

[2003 c 53 § 57; 2002 c 290 § 9.]

NOTES:

***Reviser's note:** cf. 2002 c 134 § 1.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

RCW 9.94A.520
Offense seriousness level.

The offense seriousness level is determined by the offense of conviction.

[1990 c 3 § 703; 1983 c 115 § 6. Formerly RCW 9.94A.350.]

NOTES:

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9.94A.525
Offender score.

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in

separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the

current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

(18) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Accordingly, prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions.

[2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15. Prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

NOTES:

Reviser's note: This section was amended by 2002 c 107 § 3 and by 2002 c 290 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2002 c 290 §§ 2 and 3: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Finding -- Application -- 2002 c 107: See notes following RCW 9.94A.030.

Effective date -- 2001 c 264: See note following RCW 9A.76.110.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1999 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 331 § 5.]

Effective date -- 1998 c 211: See note following RCW 46.61.5055.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Application -- 1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Application -- 1988 c 157: See note following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

Misdemeanors: The Commission decided not to include misdemeanors in the offender score for two reasons: 1) the emphasis of the legislation was on felonies, and 2) the reliability of court records varies greatly throughout the state. An exception to this policy was made in the case of felony traffic offenses. The Commission decided that for these crimes, previous serious driving misdemeanors are relevant in establishing the offender's history of similar behavior. The Commission anticipates that in some instances an offender's history of misdemeanors may be used by the court in selecting a sentence within the standard sentence range or in departing from the range to administer an exceptional sentence.

Role of Criminal History: The Commission's mandate from the Legislature was to consider both the seriousness of the crime and the nature and extent of criminal history. The Commission decided to emphasize the current offense in establishing standard sentence ranges but also to give weight to a person's past convictions, including the pattern of those convictions. Given the legislation's emphasis on sanctions for violent crimes, the Commission decided that repeat violent offenders needed to be identified and dealt with severely. As a result, the grid places an accelerated emphasis on criminal history for the repeat violent offender.

Prior Offenses: The Commission decided that the weighing of prior offenses should vary depending on the present offense. Thus, a criminal history with serious violent crime convictions counts most heavily when the current offense is also a serious violent offense; previous convictions for violent offenses count more heavily when the current offense is violent; prior burglary convictions count more heavily when the current offense is a burglary; prior drug offenses count more heavily when the current offense is a drug offense; and prior violent felony traffic offenses count more heavily when the current offense is a felony traffic offense. The Legislature has subsequently provided for counting sex offenses more heavily when the current offense is a sex offense. Subsection 5(b) refers to prior convictions "served concurrently." The meaning of this term was addressed in State v. Hartley, 41 Wn. App. 669 (1985).

Anticipatory Offenses: A prior conviction for an anticipatory crime (attempt, solicitation, conspiracy) counts as two points if the completed crime constitutes a "violent offense." State v. Becker, 59 Wn. App. 848(1990). In 1999, The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act ("VUCSA") fall under RCW 9A.28.030 and are not "drug offenses" under RCW 69.50. Solicitations to commit VUCSA offenses are not subject to community placement requirements for completed VUCSA offenses. See In re Hopkins, 137 Wn.2d 897 (1999); but see State vs. Howell, 902 Wn. App. 288 (2000) (scoring anticipatory VUSCA offenses as completed).

Juvenile Criminal History: Since the legislation required that certain prior juvenile felony adjudications be included as part of criminal history, the Commission needed to establish the relative weight of these felonies in comparison to adult prior felonies. The Commission decided that prior violent felony convictions, whether committed by an adult or a juvenile, should receive the same number of points if the instant offense was violent. The Commission believed that a distinction was necessary between nonviolent adult felonies and nonviolent juvenile felonies because nonviolent juvenile felonies often represent less serious conduct.

In addition, under the definition of juvenile criminal history in RCW 9.94.030, the legislation originally specified that prior juvenile convictions are not considered after the offender reaches age 23; the Commission therefore wanted to avoid a significant disparity between the potential Offender Score for someone at age 22 and someone at age 23. Thus, the decision was to count juvenile nonviolent felony adjudications at one-half point (rounding down to the nearest whole number). In 1986 and 1997, the Legislature expanded the definition of criminal history to include all juvenile felony adjudications.

In 1999, the Court of Appeals, Division I, ruled that pre-1997 plea agreements, providing that certain juvenile offenses would not be counted in criminal history, do not insulate current offenders from changes in the law and cannot be relied upon when an offender is sentenced for a subsequent conviction for an offense committed after the effective date of the change in 1997. See State v. McRae, 96 Wn. App. 298 (1999).

"Wash Out" of Priors: The Commission decided that adult Class A felonies should always be considered as part of the Offender Score. The Commission decided that prior Class B and C felonies should eventually "wash out" and be eliminated from the Offender Score. The 1995 Legislature amended the "wash-out" rule to preclude "wash-out" based on misdemeanor as well as felony convictions. In State V. Watkins, 86 Wn. App. 852 (1997), the court held that the

1995 amendment applies to all prior felony convictions, regardless of whether the conviction was previously washed out.

Out-of-state Convictions: In calculating the Offender Score, out-of-state convictions must be compared to Washington law.

The question of whether a foreign conviction constituted a felony was discussed in State v. Southerland, 43 Wn. App. 246 (1986).

The 1986 Amendments:

The 1986 amendments made several changes to this section:

- *Added a definition of "prior conviction" and a definition of "other current offenses" in subsection (1);*
- *Provided that Class A juvenile convictions always count in the criminal history score if a juvenile was at least 15 at the time of the offense (previously, juvenile convictions no longer counted after the person was 23 years of age);*
- *Changed the scoring rules for felony traffic offenses;*
- *Clarified the fact that anticipatory offenses are to be counted the same as completed offenses for the purpose of scoring current convictions; and*
- *Allowed post-1986 prior adult convictions which were served concurrently to be counted separately.*

The 1987 Amendments:

The 1987 amendments changed the scoring rules for First and Second Degree Escape. All prior felony convictions count in the criminal history score instead of only prior escapes counting. However, only prior escape convictions count against Willful Failure to Return from Furlough and Willful Failure to Return from Work Release or Escape from Community Custody.

The 1988 Amendments:

The Commission recommended some changes to this section to clarify ambiguities and correct previous drafting errors. The rule on scoring for serious violent offenses (RCW 9.94A.360(10)) as amended to include Homicide by Abuse. The 1987 Legislature defined this crime as a serious violent offense, but neglected to reference it in the rules on offender scoring.

The scoring rules for felony traffic offenses were amended to clarify that prior Vehicular Assaults also receive two points. This scoring procedure was previously reflected in the Offender Score Matrix, but the narrative was not accurate. Because of drafting errors caused by having the scoring rules in two sections, the Commission recommended the Offender Score Matrix (RCW 9.94A.330) be repealed, which it was in 1988.

The 1988 Legislature added a point to the offender score if the current offense was committed while the offender was on community placement.

The 1990 Amendments:

Several scoring rules were changed by the 1990 Legislature. These changes are effective for crimes committed after June 30, 1990, and include:

- *Adult and juvenile prior sex offenses are always included in the offender score; they do not wash out.*
- *Juvenile sex offenses are counted regardless of the age of the offender at the time of commission of the juvenile offense or the current offense.*
- *Juvenile prior convictions for violent offenses that are sentenced on the same day now count as separate crimes in cases involving separate victims.*
- *Residential Burglary was included with First and Second Degree Burglary in the offender scoring rules. The 1989 Legislature neglected to amend this section in the bill creating the crime of Residential Burglary.*
- *Prior and other current sex offenses count three points when the current conviction is a sex offense.*

<u>The 1995 Amendments</u>:

The 1995 Legislature required that juvenile convictions for serious violent offenses (as defined in RCW 9.94A.030(29)) always be counted in the offender score, regardless of the offender's age at the time of the offense. The Legislature also prohibited "wash out" of a prior conviction if, within the prescribed time period, an offender commits a crime for which he or she is subsequently convicted. Thus the qualifying period is measured not from release until a subsequent conviction, but from release until a subsequent offense. Intervening misdemeanors and gross misdemeanors, as well as felonies, appear to preclude "wash out." The legislation also amended (3) to classify federal convictions according to comparable Washington definitions and sentences, and to classify federal felony convictions as class C felonies, for purposes of calculating the offender score, when there is no clearly comparable Washington offense. In addition, (6) was amended to permit a sentencing court to presume that certain prior offenses did not encompass the same criminal conduct for scoring purposes. The term "served concurrently" in (6) was defined by adding (6)(b).

<u>The 1997 Amendments</u>:

The 1997 Legislature required that all prior juvenile felonies be counted as criminal history if they were sentenced consecutively, unless the court determines that they constituted the "same criminal conduct" as defined in RCW 9.94A.400. The Legislature did not change the fractional point values assigned to certain juvenile offenses.

<u>The 1999 Amendments:</u>

The 1999 Legislature amended RCW 9.94A.360 to ensure that all "serious violent" offenses are "triples scored" as criminal history when the current offense is another "serious violent" offense, including Manslaughter 1, which was added to the list of "serious violent" offenses in 1997.

The 1999 Legislature also clarified that, although prior DUI-related convictions may not be considered in history when the current offenses is Vehicular Homicide by Being Under the

Influence of Intoxicating Liquor or Any Drug (because a two-year enhancement results from each prior DUI-related offense in such cases), other prior non-DUI-related serious traffic offenses should be included in the offender score when the current offense is Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug.

RCW 9.94A.530
Standard sentence range. ***(Effective April 15, 2005.)***

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for other adjustments as specified in RCW 9.94A.533 shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in RCW 9.94A.537. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in *RCW 9.94A.535(2) (d), (e), (g), and (h).

[2005 c 68 § 2; 2002 c 290 § 18; 2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8. Formerly RCW 9.94A.370.]

NOTES:

***Reviser's note:** RCW 9.94A.535 was amended by 2005 c 68 § 3, changing subsection (2) to subsection (3).

Intent -- Severability -- Effective date -- 2005 c 68: See notes following RCW 9.94A.537.

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

The Commission believed that defendants should be sentenced on the basis of facts which are acknowledged, proven, or pleaded to. Concerns were raised about facts which were not proven as an element of the conviction or the plea being used as a basis for sentence decisions, including decisions to depart from the sentence range. As a result, the "real facts policy" was adopted. Amendments in 1986 clarified that facts proven in a trial can be used by a court in determining a sentence.

If the defendant disputes information in the presentence investigation, it is anticipated that an evidentiary hearing will be held to resolve the issue.

RCW 9.94A.533
Adjustments to standard sentences.

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28, RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28, RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a

statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28, RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28, RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50, RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605.

(7) An additional two years shall be added to the standard sentence range for vehicular

homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

[2003 c 53 § 58; 2002 c 290 § 11.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

RCW 9.94A.535
Departures from the guidelines. ***(Effective April 15, 2005.)***

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion

insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50, RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the

age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building

or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

[2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

NOTES:

Intent -- Severability -- Effective date -- 2005 c 68: See notes following RCW 9.94A.537.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date -- Application -- 1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

Standard sentence ranges represent the appropriate sanction for the "typical" case. The judge will consider individual factors when setting the determinate sentence within the standard sentence range. Some cases, however, are exceptional and require departure from the standard sentence range.

Although it was recognized that not all exceptional fact patterns can be anticipated, the Commission determined that a carefully considered nonexclusive list of appropriate justifications for departures from the standard range would be helpful to both the trial and appellate courts. This list is intended as a frame of reference for the court to use in identifying the exceptional case. The list includes examples of mitigating and aggravating factors. As the state has gained more experience with this new sentencing system, additional factors have been added to this list.

One illustrative mitigating factor concerns operation of the multiple offense policy. The Commission was particularly concerned about multiple offenses committed in separate jurisdictions where separate sentencing hearings would occur, thus resulting in a higher presumptive sentence than if the crimes were committed in a single jurisdiction and there was only one hearing. In that instance, if the multiple offense policy results in such comparatively high presumptive sentences, the judge might want to consider departing from the standard sentence range in order to impose a less severe sentence, depending, of course, on the particular set of case facts. There was also concern that the multiple offense policy might sometimes result in a presumptive sentence that is clearly too lenient in light of the purposes of this chapter.

The 1986 amendments provided better enumeration of the aggravating and mitigating factors. In addition, the reference to firearm possession in major VUCSA offenses was removed. The Commission decided that when firearm use was charged, it should be used to set a sentence within the standard range or as part of a sentence enhancement under RCW9.94A.310; if firearm use is not charged, it can influence the sentence only upon the stipulation of both parties under RCW9.94A.370. The other 1986 amendment added the adjective "current" to subsection (2) to make it clear that aggravating factors only apply to the circumstances surrounding the charged offense.

The 1990 Legislature added a finding of sexual motivation as an aggravating factor.

The 1995 Legislature authorized an exceptional sentence above the standard range when a defendant's prior unscored misdemeanor or foreign criminal history results in a presumptive sentence that is clearly too lenient.

The 1996 Legislature added two new statutory aggravating factors: (1) that the offense was violent and the defendant knew the victim was pregnant, and (2) that the offense involved domestic violence and additional circumstances as defined.

The 1997 Legislature authorized an exceptional sentence above the range in cases where a rape resulted in the pregnancy of a child victim.

The 1999 Legislature added a new aggravating factor: the defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

The Supreme Court reaffirmed in 1999 that an aggravating factor of "future dangerousness" may not be used as a justification to impose an exceptional sentence, unless the offense is a sex offense. See State v. Halgren, 137 Wn.2d 340 (1999).

RCW 9.94A.537
Aggravating circumstances -- Sentences above standard range. ***(Effective April 15, 2005.)***

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(3) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(4) If the court conducts a separate proceeding to determine the existence of aggravating circumstances, the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(5) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

[2005 c 68 § 4.]

NOTES:

Intent -- 2005 c 68: "The legislature intends to conform the sentencing reform act, chapter 9.94A, RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

Severability -- 2005 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

Effective date -- 2005 c 68: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

RCW 9.94A.540
Mandatory minimum terms. ***(Effective July 24, 2005.)***

(1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced

to a minimum term of total confinement not less than sixty months.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(3)(a) Subsection (1) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

[2005 c 437 § 2; 2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

NOTES:

Findings -- Intent -- 2005 c 437: "(1) The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

(2) The legislature intends to eliminate the application of mandatory minimum sentences under RCW 9.94A.540 to juveniles tried as adults, and to continue to apply all other adult sentencing provisions to juveniles tried as adults." [2005 c 437 § 1.]

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1999 Legislature provided an exception to the mandatory minimum confinement requirement for offenders granted an "extraordinary medical placement" by the Secretary of Corrections pursuant to RCW 9.94A.150(4). See RCW 9.94A.120(4).

RCW 9.94A.545
Community custody.

Except as provided in RCW 9.94A.650, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50, or 69.52, RCW or an attempt, conspiracy, or solicitation to commit such a crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.

[2003 c 379 § 8; 2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22. Formerly RCW 9.94A.383.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1999 c 196 § 10: "Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000." [1999 c 196 § 19.]

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Applicability -- 1988 c 143 §§ 21-24: See note following RCW 9.94A.505.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.550
Fines.

Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	$0 - 50,000
Class B felonies	$0 - 20,000
Class C felonies	$0 - 10,000

[2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.555
Findings and intent -- 1994 c 1.

(1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process.

[1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]

NOTES:

Severability -- 1994 c 1: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 1 § 6 (Initiative Measure No. 593, approved November 2, 1993).]

Short title -- 1994 c 1: "This act shall be known and may be cited as the persistent offender accountability act." [1994 c 1 § 7 (Initiative Measure No. 593, approved November 2, 1993).]

Captions -- 1994 c 1: "Captions as used in this act do not constitute any part of the law." [1994 c 1 § 8 (Initiative Measure No. 593, approved November 2, 1993).]

RCW 9.94A.561
Offender notification and warning.

A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties.

[1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.393.]

NOTES:

Severability -- Short title -- Captions -- 1994 c 1: See notes following RCW 9.94A.555.

RCW 9.94A.562
Court-ordered treatment--Required notices.

When any person is convicted in a superior court, the judgment and sentence shall include a statement that if the offender is or becomes subject to court-ordered mental health or chemical dependency treatment, the offender must notify the department and the offender's treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by an offender who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety is not enhanced by the sharing of this offender's information.

[2004 c 166 § 11.]

NOTES:

Severability -- Effective dates--2004 c 166: See notes following RCW 71.05.040.

RCW 9.94A.565
Governor's powers.

(1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the

offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender.

[1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.394.]

NOTES:

Severability -- Short title -- Captions -- 1994 c 1: See notes following RCW 9.94A.555.

RCW 9.94A.570
Persistent offenders.

Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

[2000 c 28 § 6. Formerly RCW 9.94A.560.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

In 1993, Initiative Measure No. 593 amended the Act to require that persistent offenders be sentenced to life in prison without the possibility of release, unless the death penalty is imposed for Aggravated Murder under RCW 10.95.030. See also RCW 9.94A.030(32).

Initiative 593 also provided that mandatory periods of total confinement under this subsection (for persistent offenders and those convicted of Murder 1, Assault 1, Assault of a Child 1, and Rape 1) may not be reduced during the mandatory minimum term of confinement for any reason other than emergency medical treatment or, in the case of those convicted of Rape 1, commitment to an inpatient treatment facility. In 1999, the Court of Appeals, Division I, invalidated the provision of Initiative 593 that made Murder 1, Assault 1, Assault of a Child 1 and Rape 1 offenders ineligible for earned release during their mandatory minimum terms, because that issue did not relate to the subject title of the Initiative (the "three strikes" provision), thereby violating the single-subject rule of the state Constitution. See State v. Cloud, 976 P.2d 649 (1999).

RCW 9.94A.575
Power to defer or suspend sentences abolished -- Exceptions.

The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended.

[2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13. Formerly RCW 9.94A.130.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.580
Specialized training.

The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a determination that the person would, may require such successful participation as a condition for eligibility to obtain early release from the confines of a correctional facility.

The department shall adopt rules and procedures to administer this section.

[1994 sp.s. c 7 § 533. Formerly RCW 9.94A.132.]

NOTES:

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

RCW 9.94A.585
Which sentences appealable -- Procedure -- Grounds for reversal -- Written opinions.

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

[2002 c 290 § 19; 2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21. Formerly RCW 9.94A.210.]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.589
Consecutive or concurrent sentences.

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the

second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

[2002 c 175 § 7; 2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11. Formerly RCW 9.94A.400.]

NOTES:

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1996 c 199: See note following RCW 9.94A.505.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Application -- 1988 c 157: See note following RCW 9.94A.030.

Applicability -- 1988 c 143 §§ 21-24: See note following RCW 9.94A.505.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

Under the SRA, a sentencing judge must impose concurrent sentences. There are two exceptions to this policy: (1) under subsection (b), a person convicted of two or more serious violent offenses arising from separate and distinct criminal conduct must be sentenced consecutively (the criminal history score is calculated differently than in subsection (a)); and (2) under subsection (3), the sentencing judge may expressly order that the sentence be served consecutively to sentences already imposed in other jurisdictions. This comment was addressed by State v. Moore, 63 Wn. App. 466 (1991).

Unless the offenses fall under the exceptions listed in subsection (1) (b) or subsection (3), consecutive sentences imposed for current offenses constitute exceptional sentences and must comply with the exceptional sentence provisions of the Act. See RCW 9.94A.535.

The 1986 amendment to subsection (3) changed this section so sentences for all current offenses run concurrently with the sentences for all other current offenses from any other state or federal court, unless the sentencing court expressly orders the sentences to be consecutive. Previously, the presumption was that such sentences would be consecutive unless the sentencing court expressly ordered otherwise. This subsection is now consistent with pre-SRA law.

Subsections (2) and (3) cover situations where, at the time the defendant is sentenced on a present conviction, he or she has not yet completed a sentence for another felony conviction. The difference between the two subsections is the phrase "under sentence of a felony." Under (2), if at the time the present crime is committed, the defendant has not completed confinement for another sentence, the confinement for the present sentence does not begin until expiration of his or her prior sentence. These sentences are to run consecutively, and an exceptional sentence is necessary to impose concurrent sentences. Under (3), if the latter crime was committed at a point before the offender was sentenced for the previous crime, the presumption is toward a concurrent sentence but the court can decide to order a consecutive sentence.

Subsection (3) will often be relevant where the defendant has been charged in multiple informations or has committed a series of crimes across court jurisdictions (crimes in more than one county, more than one state, or crimes for which he or she has been sentenced under both state and federal jurisdictions) and where the defendant will be sentenced by more than one judge. The purpose of this subsection is to allow the judge some flexibility within the guidelines in order to minimize the incidental factors of geographical boundaries and jurisdictions.

Subsection (4) covers the situation in which a court is imposing a prison sentence for a crime committed prior to July 1, 1984, where the defendant previously received a deferred or suspended sentence and now is having that probation revoked. The sentence for the revocation runs consecutively to any sentence imposed under the new presumptive scheme unless the court expressly orders a concurrent sentence.

Subsection (5) points out that the defendant must serve all terms of total confinement on consecutive sentences before other conditions are performed. As stated earlier, the multiple offense policy was among the most complex issues confronted by the Commission and the Legislature. The Legislature acknowledged in RCW 9.94A.535 (aggravating and mitigating factors) that the operation of the multiple offense policy might, in individual cases, result in a

"clearly excessive" or "clearly too lenient" presumptive sentence, and therefore, departures from the range may be appropriate.

This section does not apply to First-time Offenders sentenced under RCW 9.94A.650.

In 1988, the Commission recommended RCW 9.94A.589(1)(b) be clarified to substitute the phrase "prior convictions and other current convictions that are not serious violent offenses" for the term "criminal history." In the Commission's review of sentences it was discovered that offenders convicted of multiple serious violent offenses with additional convictions for offenses that were not serious violent offenses (for example, a burglary), the lesser offenses were frequently not calculated into the offender score. The Commission decided the problem was the use of the term "criminal history" because it appeared to only include prior offenses, not additional current offenses. Thus, the new phrase was recommended.

The 1990 Legislature changed the rules regarding consecutive sentencing for multiple serious violent offenses. The consecutive sentencing requirement now applies to two or more serious violent offenses instead of three.

The 1995 Legislature added (2)(b), for cases where an offender under community supervision is sentenced to additional conditions of community supervision for a subsequent offense.

The 1996 Legislature required that Vehicular Assault and Vehicular Homicide be treated as different criminal conduct even if the victims occupied the same vehicle, and repealed language authorizing the court to consider multiple victims in such cases as an aggravating circumstance justifying an exceptional sentence.

The enactment of Initiative Measure No. 159 by the 1995 Legislature amended RCW 9.41.010 to require "notwithstanding any other law," that an offender convicted under RCW 9.41.010 for Unlawful Possession of a Firearm 1 or 2, and for Theft of a Firearm and/or Possession of a Stolen Firearm, serve consecutive sentences for each of those offenses. The 1998 Legislature subsequently clarified that sentences for Unlawful Possession of a Firearm in the First or Second Degree <u>and</u> for Theft of a Firearm or Possession of a Stolen Firearm or both, must be served consecutively for each current conviction of the felony crimes listed and for each firearm unlawfully possessed.

In State v. Roose, 90 Wn. App 513(1998), the Court of Appeals ruled that a court is not precluded from counting multiple counts of the offense of firearm theft as a single offense for sentencing purposes under RCW 9.94A.589(1)(a), if the court enters a finding that those current offenses encompass the same criminal conduct.

The 1999 Legislature clarified RCW 9.94A.589(c) to permit all current offenses, other than current weapon-related offenses, to be considered as prior offenses when calculating an offender's criminal history score to determine a sentence for Unlawful Possession of a Firearm 1 or 2 <u>and</u> Theft of a Firearm or Possession of a Stolen Firearm, or both.

RCW 9.94A.595
Anticipatory offenses.

For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28, RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

[2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12. Formerly RCW 9.94A.410.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.599
Presumptive ranges that exceed the statutory maximum.

If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

[1998 c 235 § 3; 1983 c 115 § 13. Formerly RCW 9.94A.420.]

Comment

The 1998 Legislature clarified that if a firearm or deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the weapon enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum.

RCW 9.94A.602
Deadly weapon special verdict -- Definition.

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of

the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

[1983 c 163 § 3. Formerly RCW 9.94A.125.]

NOTES:

Effective date -- 1983 c 163: See note following RCW 9.94A.505.

Comment

The SRA did not originally provide sentence enhancement for all crimes involving a deadly weapon. In 1983, the Legislature adopted the Commission's recommendations that additional time be added to the offender's presumptive sentence for some crimes where the use of the deadly weapon warranted additional punishment. These crimes were Kidnapping 1 and 2, Rape 1, Robbery 1, Burglary 1, Burglary 2 (non-dwelling), Assault 2, Escape 1 and Delivery or Possession with Intent to Deliver a Controlled Substance (RCW 9.94A.310). The 1988 Legislature added Theft of Livestock 1 and 2 to this list and the 1992 Legislature added Assault of a Child 2 to the list. The 1986 Legislature had also clarified that the deadly weapon enhancements apply to anticipatory offenses and to all the drug offenses enumerated in RCW 9.94A.030(19).

Initiative 159, enacted in 1995, made the deadly weapon enhancement applicable to nearly all felonies, doubled that enhancement for subsequent offenses, and created a separate, more severe enhancement where the weapon was a firearm. State v. Workman, 90 Wn.2d 443 (1978), prohibits "double counting" an element of an offense for the purpose of proving the existence of the crime and using it to enhance the sentence, without specific legislative intent to so allow. Consistent with Workman, neither the firearm enhancement nor the "other deadly weapon" enhancement applies to specified crimes where the use of a firearm is an element of the offense (listed in RCW 9.94A.310(3)(f) and (4)(f)). These sentence enhancements apply to crimes committed on and after July 23, 1995. They are to be served consecutively to any other sentence. The sentencing court should first calculate the presumptive sentence range for the current offense, using the appropriate Offense Seriousness Level and Offender Score. Then the firearm or other deadly weapon enhancement is added to the entire range. See RCW 9.94A.310(3) and (4).

A car is not a deadly weapon for sentencing enhancement purposes. See State v. Shepherd, 977 P.2d 635 (1999).

RCW 9.94A.605
Methamphetamine -- Manufacturing with child on premises -- Special allegation.

In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

[2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.128.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 2002 c 134: See note following RCW 69.50.440.

RCW 9.94A.607
Chemical dependency.

(1) Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences.

[1999 c 197 § 2. Formerly RCW 9.94A.129.]

NOTES:

Severability -- 1999 c 197: See note following RCW 9.94A.030.

RCW 9.94A.610
Drug offenders -- Notice of release or escape.

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or69.50.4011 (2) (a) or (b).

[2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.154.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Comment

As originally enacted, this section applied to offenders convicted of Manufacture, Delivery, or

Possession with Intent to Manufacture or Deliver Narcotics Classified in Schedule I or II under the Uniform Controlled Substances Act, or counterfeits of such narcotics. The 1996 Legislature expanded the notification requirement in this section to offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine or Counterfeit Methamphetamine.

RCW 9.94A.612
Prisoner escape, parole, release, placement, or furlough -- Notification procedures.

(1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department

of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

[1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.155.]

NOTES:

Findings -- Intent -- 1994 c 129: See note following RCW 4.24.550.

Severability -- 1992 c 186: See note following RCW 9A.46.110.

Severability -- Application -- 1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9.94A.614
Prisoner escape, release, or furlough -- Homicide, violent, and sex offenses -- Rights of victims and witnesses.

The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 9.94A.612 and 9.94A.616.

[1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.156.]

RCW 9.94A.616
Prisoner escape, release, or furlough -- Requests for notification.

Requests for notification under RCW 9.94A.612 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections.

[1985 c 346 § 3. Formerly RCW 9.94A.157.]

RCW 9.94A.618
Prisoner escape, release, or furlough -- Notification as additional requirement.

The notification requirements of RCW 9.94A.612 are in addition to any requirements in RCW 43.43.745 or other law.

[1985 c 346 § 4. Formerly RCW 9.94A.158.]

RCW 9.94A.620
Prisoner escape, release, or furlough -- Consequences of failure to notify.

Civil liability shall not result from failure to provide notice required under RCW 9.94A.612 through 9.94A.618, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence.

[1985 c 346 § 7. Formerly RCW 9.94A.159.]

RCW 9.94A.625
Tolling of term of confinement, supervision.

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) Any term of community custody, community placement, or community supervision shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of community custody, community placement, or community supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not to have violated a condition or requirement of community custody, community placement, or community supervision, time spent in confinement due to such detention shall not toll the period of community custody, community placement, or community supervision.

(4) For terms of confinement or community custody, community placement, or community supervision, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

[2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.170.]

NOTES:

Effective date -- 2000 c 226 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

In 1993, the Legislature amended RCW 9.94A.170. The power to establish a tolling date for sentences involving supervision was shifted from the court to the Department of Corrections.

The 1999 Legislature, enacting the Offender Accountability Act, amended this section to substitute the term "community custody" for the word "supervision." Under that Act, all forms of supervision in the community, for offenses committed on or after July 1, 2000, will be called "community custody."

RCW 9.94A.628
Postrelease supervision -- Violations -- Expenses.

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.634. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

[1988 c 153 § 8. Formerly RCW 9.94A.175.]

NOTES:

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

RCW 9.94A.631
Violation of condition or requirement of sentence -- Arrest by community corrections officer -- Confinement in county jail.

If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order.

[1984 c 209 § 11. Formerly RCW 9.94A.195.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

The Sentencing Guidelines Commission intends that Community Corrections Officers exercise their arrest powers sparingly, with due consideration for the seriousness of the violation alleged and the impact of confinement on jail population. Violations may be charged by the Community Corrections Officer upon notice of violation and summons, without arrest.

The search and seizure authorized by this section should relate to the violation that the Community Corrections Officer believes to have occurred.

RCW 9.94A.634
Noncompliance with condition or requirement of sentence -- Procedure -- Penalty.

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the

following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05, RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05, RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

[2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.200.]

NOTES:

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- 1998 c 260: See note following RCW 9.94A.500.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.92.150.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

The 1998 Legislature authorized the courts to order a mental status evaluation and to require participation in available outpatient mental health treatment for offenders whose sentence includes community placement or community supervision if a court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025 and that this condition is likely to have influenced the offense.

Although the Legislature has not adopted specific guidelines for the length of sanctions for various violations, the imposition of sanctions should be evaluated with reference to the standard range of the original offense. Rarely should the time to be served for violations exceed the underlying standard range.

The 1995 Legislature added (2), for cases where an offender under community supervision is sentenced for a subsequent offense under RCW 9.94A.400.

The 1995 Legislature also authorized the Department of Corrections to enter into agreements with non-complying offenders to impose alternative sanctions. Such agreements must be reported to the sentencing court and prosecutor, and the court may modify the sanctions after a hearing.

RCW 9.94A.637
Discharge upon completion of sentence -- Certificate of discharge -- Obligations, counseling after discharge.

(1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99, RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

[2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Intent -- 2002 c 16: "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

Application -- 2000 c 119: See note following RCW 26.50.021.

Purpose -- Severability -- 1994 c 271: See notes following RCW 9A.28.020.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.640
Vacation of offender's record of conviction.

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

[1987 c 486 § 7; 1981 c 137 § 23. Formerly RCW 9.94A.230.]

NOTES:

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

While all offenders may obtain a discharge under RCW 9.94A.220, only those convicted of a nonviolent offense who have remained crime-free for a specific period may earn a vacation of their conviction. This vacation of the conviction is analogous to the dismissal obtained under RCW 9.95.240 (deferred sentence). See also RCW 9.96 (Restoration of Civil Rights) and 9.96A (Employment Rights). A vacated conviction under this statute cannot be used as criminal history. The issue of whether a vacated conviction entitles an offender to possess a firearm under state law has yet to be determined by the courts; federal law precludes such possession.

RCW 9.94A.650
First-time offender waiver.

(1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2); or

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in subsection (3) of this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to a community corrections officer; or

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community restitution work.

(3) The terms and statuses applicable to sentences under subsection (2) of this section are:

(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community

supervision may include up to the period of treatment, but shall not exceed two years; and

(b) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).

(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

[2002 c 175 § 9; 2000 c 28 § 18.]

NOTES:

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The First-time Offender Waiver allows a court to impose up to 90 days of confinement, even for offenders with a sentence of 0 to 60 days.

RCW 9.94A.660
Drug offender sentencing alternative. ***(Effective until October 1, 2005.)***

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50, RCW or a criminal solicitation to commit such a violation under chapter 9A.28, RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(2) If the standard sentence range is greater than one year and the sentencing court determines

that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

The court shall also impose:

(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(b) Crime-related prohibitions including a condition not to use illegal controlled substances;

(c) A requirement to submit to urinalysis or other testing to monitor that status; and

(d) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community restitution work;

(vi) Stay out of areas designated by the sentencing court;

(vii) Such other conditions as the court may require such as affirmative conditions.

(3) If the offender violates any of the sentence conditions in subsection (2) of this section or is found by the United States attorney general to be subject to a deportation order, a violation

hearing shall be held by the department unless waived by the offender.

(a) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(b) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(4) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(5) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time.

[2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

NOTES:

Reviser's note: This section was amended by 2002 c 175 § 10 and by 2002 c 290 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- Effective date -- 2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.660
Drug offender sentencing alternative. ***(Effective October 1, 2005.)***

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50, RCW or a criminal solicitation to commit such a violation under chapter 9A.28, RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(e) The standard sentence range for the current offense is greater than one year; and

(f) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers from drug addiction;

(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:

(a) Information on the issues required to be addressed in subsection (2) of this section; and

(b) A proposed treatment plan that must, at a minimum, contain:

(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

(ii) The recommended frequency and length of treatment, including both residential chemical

dependency treatment and treatment in the community;

(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(iv) Recommended crime-related prohibitions and affirmative conditions.

(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(5) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(6) The residential chemical dependency treatment-based alternative shall include:

(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A, RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in

the plan under subsection (3)(b) of this section. The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715;

(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

(7) If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court may impose any of the following conditions:

(a) Devote time to a specific employment or training;

(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(c) Report as directed to a community corrections officer;

(d) Pay all court-ordered legal financial obligations;

(e) Perform community restitution work;

(f) Stay out of areas designated by the sentencing court;

(g) Such other conditions as the court may require such as affirmative conditions.

(8)(a) The court may bring any offender sentenced under this section back into court at any

time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(9) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(10) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(11) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

[2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

NOTES:

Application -- 2005 c 460: "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

Effective date -- 2005 c 460: "This act takes effect October 1, 2005." [2005 c 460 § 3.]

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- Effective date -- 2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

At the request of the Sentencing Guidelines Commission, the 1995 Legislature created an optional, treatment-oriented Drug Offender Sentencing Alternative for offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a small quantity of a narcotic drug, where the offender has no previous felony convictions, where there is no deadly weapon enhancement, and where the sentencing court determines that the offender would benefit from substance abuse treatment. The definition of "small quantity" was intended to be determined by the court based on local standards. A defendant need not be dependent on a drug to be eligible for the alternative sentence.

Under the alternative, an eligible offender is sentenced to total confinement for a period equal to half of the midpoint of the offender's standard range sentence (e.g., 12 months if the standard range is 21 to 27 months). The period of confinement must be served in a state correctional facility, even if it is for less than 12 months. Substance abuse treatment must be provided within the facility during total confinement, as well as after release on an outpatient basis. Offenders sentenced under this alternative may not be placed on work release for more than three months, unless the midpoint of the standard range is more than 24 months (i.e., their period of total confinement is more than 12 months).

Upon release at half the midpoint of the standard range, offenders sentenced under the Drug Offender Sentencing Alternative remain on community custody status for an additional year, not including any period in which they are returned to confinement for violating the terms of their release. During this period they are subject to urinalysis or other testing to monitor drug-free status.

The Drug Offender Sentencing Alternative was not intended to be available to offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine, because such offenders were eligible for the First-time Offender Waiver. However, the Legislature amended RCW 9.94A.030 to exclude such offenders from the definition of "First-time Offender," and thus those offenders were rendered ineligible for either of the sentencing alternatives.

The 1999 Legislature expanded the eligibility for the Drug Offender Sentencing Alternative to include all non-violent, non-sex offenders convicted of violating the Uniform Controlled Substances Act (RCW 69.50), including methamphetamine offenses, and also any other non-violent, non-sex offenders deemed by the court to have a chemical dependency that contributed to the crime. Effective July 25, 1999, offenders with prior felony convictions are now eligible, so long as their convictions were not violent or sex offense convictions. Offenders subject to federal INS deportation detainers or orders are not eligible. Offenders whose standard sentence is more than one year are now eligible (reduced from two years). Courts may prohibit DOSA offenders from drug and alcohol use and may impose other affirmative conditions, and violators are subject to graduated sanctions, including reclassification to serve the unexpired term of total confinement.

RCW 9.94A.670
Special sex offender sentencing alternative.

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall order the offender to serve a term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within

the standard range based on the presence of an aggravating circumstance listed in *RCW 9.94A.535(2). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(c) The court shall order treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) As conditions of the suspended sentence, the court shall impose specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (7)(b) of this section.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three

months prior to the anticipated date for completion of treatment.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(8) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (4) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (4) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(9)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (10) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make

satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155, RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

[2004 c 176 § 4; 2004 c 38 § 9; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

NOTES:

Reviser's note: *(1) RCW 9.94A.535 was amended by 2005 c 68 § 3, changing subsection (2) to subsection (3).

(2) This section was amended by 2004 c 38 § 9 and by 2004 c 176 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Effective date -- 2004 c 38: See note following RCW 18.155.075.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1990 Legislature revised several aspects of the Special Sex Offender Sentencing Alternative. These include increasing the accountability of the treatment provider to the court, changing the maximum sentence allowed from six years to eight years, increasing the length of community supervision and treatment and directing that, after July 1991, examinations and treatment under SSOSA be conducted by certified sex offender treatment providers.

The 1996 Legislature also converted the status of offenders sentenced under the Special Sex Offender Sentencing Alternative from community supervision to community custody and authorized the Department of Corrections to impose sanctions administratively. The same legislation extended the period of community custody for sex offenders sentenced to prison to three years or the period of earned release, whichever is longer, and also authorized courts to extend conditions of community custody for a period up to the statutory maximum sentence for the offense. The same legislation authorized the Department of Corrections to impose additional conditions on sex offenders serving in community custody status.

The 1997 Legislature increased from less than eight to less than eleven years the length of a standard-range sentence that may be suspended under the Special Sex Offender Sentencing Alternative. Therefore SSOSA remains available in cases eligible under prior law, despite increases in the seriousness levels of certain offenses under RCW 9.94A.320. The Legislature also required that the state pay for initial evaluation and treatment in SSOSA cases where the defendant was under 18 years old when the charge was filed.

The 1997 Legislature also clarified that offenders sentenced under SSOSA are not eligible to accrue earned early release time while serving a suspended sentence.

RCW 9.94A.680
Alternatives to total confinement.

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give

priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used.

[2002 c 175 § 12; 1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9. Formerly RCW 9.94A.380.]

NOTES:

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Severability -- 1999 c 197: See note following RCW 9.94A.030.

Application -- 1988 c 157: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Comment

One of the legislative directions to the Commission was to "emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender" (RCW 9.94A.040). In fulfilling this directive, the Commission believed it was necessary to develop a flexible policy, but one that also ensures some standardization in its application. The Commission decided that by having the court set the sentence in terms of total confinement (i.e., jail time), proportionality among like offenders would be maintained. The court then has the discretion to apply alternative conversions as a substitute for total confinement for offenders with sentences less than a year. One day of partial confinement (typically work release) or eight hours of community service may replace one day of total confinement. The community service hours, however, are limited to 240 hours (30 days) and thus may only be a partial equivalent for any sentence over 30 days.

A converted sentence may include an equivalent combination of jail time, work release, and community service hours. As an example, a sentence of total confinement for nine months may be converted to five months of jail, three months of partial confinement, and one month of community service.

In 1988, the Commission recommended this subsection be rewritten to clarify that conversions to community service hours are not available for offenders convicted of violent offenses. The court is directed to indicate its reasons in writing for not using alternatives to confinement for eligible offenders.

The 1999 Legislature permitted courts to authorize county jails to convert jail confinement to an available county-supervised option for any non-violent, non-sex offender whom the courts finds has a chemical dependency that contributed to the offense. Courts are permitted to require such offenders to perform affirmative conduct and/or to participate in rehabilitative programs.

RCW 9.94A.685
Alien offenders.

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A, RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and naturalization service for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee find [finds] that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction.

(3) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030, or any other offense that is a crime against a person.

(4) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and naturalization service for deportation. Upon the release of an offender to the immigration and naturalization service, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect until the expiration of the offender's conditional release.

(5) Upon arrest of an offender, the department shall seek extradition as necessary and the offender shall be returned to the department for completion of the unserved portion of the offender's term of total confinement. The offender shall also be required to fully comply with all the terms and conditions of the sentence.

(6) Alien offenders released to the immigration and naturalization service for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(7) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(8) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

[1993 c 419 § 1. Formerly RCW 9.94A.280.]

Comment

The 1993 Legislature added section RCW 9.94A.280 authorizing the Department of Corrections to release certain alien offenders to the Immigration and Naturalization Service for deportation

RCW 9.94A.690
Work ethic camp program -- Eligibility -- Sentencing.

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation under chapter 9A.28, or 69.50, RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

[2000 c 28 § 21; 1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4. Formerly RCW 9.94A.137.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1999 c 197: See note following RCW 9.94A.030.

Findings -- Purpose -- Short title -- Severability -- Effective date -- 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Findings -- Intent--1993 c 338: See RCW 72.09.400.

Severability -- Effective date--1993 c 338: See notes following RCW 72.09.400.

Comment

The 1993 Legislature established the Work Ethic Camp program sentencing alternative.

The 1995 Legislature authorized a sentence to Work Ethic Camp for offenders convicted of drug delivery. That sentence to Work Ethic Camp was intended as an alternative to the Drug Offender Sentencing Alternative, not for use in conjunction with it. The 1999 Legislature subsequently made all drug offenders ineligible for the Work Ethic Camp (see RCW 9.94A.137).

The 1995 Legislature expanded eligibility for Work Ethic Camp by including those sentenced for Possession, Manufacture, Delivery, or Possession with Intent to Deliver a Controlled Substance, eliminating age-based qualifications and reducing from 22 to 16 months the minimum term of confinement qualifying an offender for Work Ethic Camp. The legislation also requires the sentencing court to specify conditions of supervision on community custody status after completion of the Work Ethic Camp, and to specify that violating those conditions may return the offender to total confinement for the remainder of the sentence. The Department of Corrections may deny placement in the Work Ethic Camp on the basis of an offender's custody level. This sentencing option was intended to be an alternative to the treatment-oriented Drug Offender Sentencing Alternative, not for use in conjunction with it.

The 1999 Legislature revised the eligibility criteria for the Work Ethic Camp, effective for offenses committed on or after July 25, 1999. Offenders violating the Uniform Controlled Substances Act (RCW 69.50) are not eligible, nor are offenders subject to federal INS deportation detainers or orders. Offenders who have previously participated in Work Ethic Camp are also not eligible. The 1999 Legislature also reduced the minimum sentence qualifying an offender for Work Ethic Camp from 16 months down to 12 months and a day (and a maximum sentence of 36 months). In addition, the 1999 Legislature eliminated the "three-to-one conversion," whereby one day in Work Ethic Camp equaled three days of total confinement.

RCW 9.94A.700
Community placement.

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in

RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50, or 69.52, RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

[2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1996 Legislature required that persons sentence to prison for Vehicular Assault or Vehicular Homicide also be sentenced to community placement for two years or up to the period of earned release time, whichever is longer.

The 1996 Legislature also authorized courts to require that sex offenders whose victims were minors comply with conditions of community placement imposed by the Department of Corrections regarding contact with minor victims or with children of similar age or circumstances.

RCW 9.94A.705
Community placement for specified offenders.

Except for persons sentenced under RCW 9.94A.700(2) or 9.94A.710, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50, or 69.52, RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section.

[2003 c 379 § 5; 2000 c 28 § 23.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.710
Community custody for sex offenders.

(1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94A.700(4) and may include those provided for in RCW 9.94A.700(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any

conditions imposed by the department under RCW 9.94A.720.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20, RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

[2000 c 28 § 24.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.712
Sentencing of nonpersistent offenders. ***(Expires July 1, 2006.)***

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a);

committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through9.95.435 .

[2005 c 436 § 2; 2004 c 176 § 3. Prior: 2001 2nd sp.s. c 12 § 303.]

NOTES:

Expiration date -- 2005 c 436: See note following RCW 9.94A.030.

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

RCW 9.94A.712
Sentencing of nonpersistent offenders. ***(Effective July 1, 2006.)***

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a);

committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in

rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through9.95.435 .

[2004 c 176 § 3. Prior: 2001 2nd sp.s. c 12 § 303.]

NOTES:

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

RCW 9.94A.713
Nonpersistent offenders -- Conditions.

(1) When an offender is sentenced under RCW 9.94A.712, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions of the offender's community custody based upon the risk to community safety. In addition, the department shall make a recommendation with regard to, and the board may require the offender to participate in, rehabilitative programs, or otherwise perform affirmative conduct, and obey all laws. The board must consider and may impose department-recommended conditions.

(2) The department may not recommend and the board may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. The board shall notify the offender in writing of any such conditions or modifications.

(3) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(4) If an offender violates conditions imposed by the court, the department, or the board during community custody, the board or the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.95.435.

(5) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted

by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(a) The crime of conviction;

(b) The offender's risk of reoffending; or

(c) The safety of the community.

(6) An offender released by the board under RCW 9.95.420 shall be subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board shall be subject to the provisions of RCW 9.95.425 through 9.95.440.

(7) If the department finds that an emergency exists requiring the immediate imposition of conditions of release in addition to those set by the board under RCW 9.95.420 and subsection (1) of this section in order to prevent the offender from committing a crime, the department may impose additional conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board under subsection (1) of this section within seven working days.

[2001 2nd sp.s. c 12 § 304.]

NOTES:

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

RCW 9.94A.715
Community custody for specified offenders.

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50, or 69.52, RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in

accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20, RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine

conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

[2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent -- Effective date -- 2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1997 Legislature also clarified that the Department of Corrections, in monitoring offenders' compliance with conditions of community placement, community supervision, community service, or payment of legal financial obligations, may require them to perform affirmative actions (such as submitting to drug testing or polygraph examination).

The 1999 Legislature, enacting the Offender Accountability Act, modified RCW 9.94A.120 to authorize the imposition of affirmative conditions, both by courts and by the Department of Corrections, on eligible offenders serving a period of community custody, for offenses committed on or after July 1, 2000. Offenders will be supervised according to their risk and will be subject to
administrative sanctions by the Department of Corrections. Community custody is required for all sex offenses, all violent offenses, all crimes against persons (defined in RCW 9.94A.440) and all felony drug offenses (except DOSA sentences) committed on or after July 1, 2000, and community custody will replace "community placement" and "community supervision" for offenses committed on or after that date.

RCW 9.94A.720
Supervision of offenders.

(1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010.

[2003 c 379 § 7; 2002 c 175 § 14; 2000 c 28 § 26.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1993 Legislature authorized the Department of Corrections, after July 25, 1993, to require offenders under its supervision to pay for special services including electronic monitoring, day reporting and telephone reporting, depending on the offender's ability to pay.

NOTES: *Reviser's note: These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

RCW 9.94A.722
Court-ordered treatment--Required disclosures.

When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief.

[2004 c 166 § 9.]

NOTES:

Severability -- Effective dates--2004 c 166: See notes following RCW 71.05.040.

RCW 9.94A.723
Court-ordered treatment--Offender's failure to inform.

An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

[2004 c 166 § 7.]

NOTES:

Severability -- Effective dates--2004 c 166: See notes following RCW 71.05.040.

RCW 9.94A.725
Offender work crews.

Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the

monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court.

[2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.728
Earned release time.

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); and

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50, or 69.52, RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50, or 69.52, RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release

plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days

before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

[2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

NOTES:

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Severability -- 2003 c 379: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

Effective dates -- 2003 c 379: "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Intent -- 2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application -- 2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability -- 2002 c 50: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

Effective date -- 2002 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Severability -- 1996 c 199: See note following RCW 9.94A.505.

Findings and intent -- Short title -- Severability -- Captions not law -- 1995 c 129: See notes following RCW 9.94A.510.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Application -- 1989 c 248: See note following RCW 9.92.151.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

The 1990 Legislature changed the maximum earned early release time to fifteen percent of the sentence for offenders convicted of Class A sex offenses and serious violent offenses. The Legislature also clarified that earned early release credits shall not be granted until earned.

Initiative 159 excluded the portion of any sentence attributable to a firearm or other deadly weapon enhancement (RCW 9.94A.310(3) and (4)) from reduction by earned early release time. This exclusion applies to sentences for crimes committed after July 23, 1995.

The 1996 Legislature provided for transfer to community custody in lieu of earned early release for persons convicted of Vehicular Homicide and Vehicular Assault.

The Court of Appeals in Personal Restraint of Mahrle, 88 Wn. App. 410 (1997), ruled that the fifteen percent cap on good time credit applies only to an offender convicted of both a Class A Serious Violent Offense and a Class A Sex Offense, committed on or after July 1, 1990, and that all other offenders may earn up to one-third earned early release time. The 1999 Legislature added punctuation to the provision in RCW 9.94A.150(1) limiting earned release time for certain offenses, clarifying that offenders convicted of serious violent offenses and offenders convicted of Class A sex offenses may receive a reduction in confinement time of no more than 15 percent of

the sentence. This language change expressed the Legislature's original intent, and although the Mahrle case was not overturned, it no longer applies to future cases.

The 1999 Legislature authorized the Secretary of Corrections to grant an "extraordinary medical placement" for any offender whose medical condition is serious enough to require costly treatment and who poses a low risk to the community because of physical incapacitation, and where cost savings will result to the state. The Department of Corrections must subject all offenders granted an extraordinary medical placement to electronic monitoring, unless it interferes with medical equipment or jeopardizes eligibility for medical care funding. Offenders under a sentence of death or of life without the possibility of release are not eligible for an extraordinary medical placement, and the Secretary of Corrections may revoke such a placement at any time. The Secretary of Corrections is also required to report annually to the Legislature on the use of the "extraordinary medical placement" option.

RCW 9.94A.7281
Legislative declaration -- Earned release time not an entitlement.

The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time. This section applies to persons convicted on or after July 1, 2003.

[2003 c 379 § 2.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

RCW 9.94A.7282
Earned release study.

The Washington state institute for public policy shall study the results of the changes in earned release under section 1, chapter 379, Laws of 2003. The study shall determine whether the changes in earned release affect the rate of recidivism or the type of offenses committed by persons whose release dates were affected by the changes in chapter 379, Laws of 2003. The Washington state institute for public policy shall report its findings to the governor and the appropriate committees of the legislature no later than December 1, 2008.

[2003 c 379 § 12.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

RCW 9.94A.731
Term of partial confinement, work release, home detention.

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW *9.94A.030(31) and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

[2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

NOTES:

***Reviser's note:** RCW 9.94A.030 was amended by 2005 c 436 § 1, changing subsection (31) to subsection (32). However, the 2005 c 436 § 1 amendments expire July 1, 2006.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.734
Home detention -- Conditions.

(1) Home detention may not be imposed for offenders convicted of:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the

home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

[2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1995 c 108: See note following RCW 9.94A.030.

RCW 9.94A.737
Community custody -- Violations. ***(Effective July 24, 2005.)***

(1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who

violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(3) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05, RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

(6) The department shall work with the Washington association of sheriffs and police chiefs

to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

(7) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.

[2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

NOTES:

Finding -- Intent -- 2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnate.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Finding -- 1996 c 275: See note following RCW 9.94A.505.

Application -- 1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Comment

The 1996 Legislature authorized a 60-day jail sanction, imposed administratively by the Department of Corrections, for violation of a condition of community custody imposed as part of

a sentence under the Special Sex Offender Sentencing Alternative, and for violations of a condition of community custody by offenders who have completed their maximum terms of total confinement. The Department may, alternatively, refer SSOSA community custody violations to the court.

The 1999 Legislature, enacting the Offender Accountability Act, expanded the authority of the Department of Corrections to impose sanctions, including up to 60 days in confinement, on all offenders required to be on community custody for part of their sentence, for offenses committed on or after July 1, 2000. Offenders subject to sanctions for violations have the right to a hearing, which they may waive, before Department of Corrections hearing officers. Violation hearing officers and community corrections officers must report through separate chains of command. A violation finding cannot be based on "unconfirmed or unconfirmable allegations," and due process protections for offenders include notice, timely hearings, the right to testify or remain silent, the right to call and question witnesses and the right to present documentary evidence. A sanction takes effect if affirmed by a hearing officer, but the offender may appeal the hearing officer's decision to a panel of three reviewing officers designated by the Secretary of Corrections. The appeal panel is required to overturn sanctions that are not reasonably related to the crime of conviction; the violation committed; the offender's risk of reoffending or to the safety of the community.

RCW 9.94A.740
Community placement, custody violators -- Arrest, detention, financial responsibility.

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.737(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.737(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

[1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5. Formerly RCW 9.94A.207.]

NOTES:

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Finding -- 1996 c 275: See note following RCW 9.94A.505.

Application -- 1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Comment

The 1996 Legislature clarified financial responsibility between local and state correctional authorities for sex offenders sanctioned for community custody violations.

The 1999 Legislature directed the Department of Corrections to devise methods, after consulting with the Washington Association of Sheriffs and Police Chiefs, for determining the 1998 bed utilization rate in local jails, and to compensate counties for the use of jail beds to confine

offenders for violating conditions of community custody, if such use exceeds a county's 1998 bed utilization rate.

RCW 9.94A.745
Interstate compact for adult offender supervision.

The interstate compact for adult offender supervision is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I

PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

ARTICLE III

THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states,

shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV

THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE

INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) To establish and maintain offices;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(n) To sue and be sued;

(o) To provide for dispute resolution among compacting states;

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE

INTERSTATE COMMISSION

(a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies

and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: PROVIDED, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.** (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting

state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act," 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE

INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;

(10) Mediation, arbitration and dispute resolution.

(f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE

RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on

issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII(b) of this compact.

ARTICLE X

FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE

AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND

JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: PROVIDED, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission

has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

[2001 c 35 § 2.]

NOTES:

Short title -- 2001 c 35: "This act shall be known and may be cited as the "interstate compact for adult offender supervision."" [2001 c 35 § 1.]

Effective date -- 2001 c 35: "(1) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001.

*(2) The interstate compact for adult offender supervision becomes effective and binding July 1, 2001, or on the date of enactment of the interstate compact for adult offender supervision by thirty-five jurisdictions, whichever is later. In determining that the compact has become effective and binding, the code reviser may rely on the written representation of the national institute of corrections of the United States department of justice." [2001 c 35 § 6.]

***Reviser's note:** The interstate compact was enacted and signed into law by the thirty-fifth state on June 19, 2002.

RCW 9.94A.74501
State council.

(1) The sentencing guidelines commission shall serve as the state council for interstate adult offender supervision as required under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. To assist the commission in performing its functions as the state council, the department of corrections shall provide staffing and support services. The commission may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, victims' groups, and the secretary of corrections, to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The commission, or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under RCW 9.94A.745, and recommend

policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of RCW 9.94A.745;

(b) Report annually to the legislature on interstate supervision operations and procedures under RCW 9.94A.745, including recommendations for policy changes; and

(c) Not later than December 1, 2004, report to the legislature on the effectiveness of its functioning as the state council under article IV of RCW 9.94A.745, and recommend any legislation it deems appropriate.

(3) The commission, or a subcommittee if formed for that purpose, shall appoint one of its members, or an employee of the department designated by the secretary, to represent the state at meetings of the interstate commission created under article III of RCW 9.94A.745 when the compact administrator cannot attend.

[2001 c 35 § 3.]

RCW 9.94A.74502
Compact administrator.

The secretary of corrections, or an employee of the department designated by the secretary, shall serve as the compact administrator under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The legislature intends that the compact administrator, representing the state on the interstate commission created under article III of RCW 9.94A.745, will take an active role to assure that the interstate compact operates to protect the safety of the people and communities of the state.

[2001 c 35 § 4.]

RCW 9.94A.74503
Other compacts and agreements -- Withdrawal from current compact.

(1) The state shall continue to meet its obligations under RCW 9.95.270, the interstate compact for the supervision of parolees and probationers, to those states which continue to meet their obligations to the state of Washington under the interstate compact for the supervision of parolees and probationers, and have not approved the interstate compact for adult offender supervision after July 1, 2001.

(2) If a state withdraws from the interstate compact for adult offender supervision under article XII(a) of RCW 9.94A.745, the state council for interstate adult offender supervision created by RCW 9.94A.74501 shall seek to negotiate an agreement with the withdrawing state fulfilling the purposes of RCW 9.94A.745, subject to the approval of the legislature.

(3) Nothing in chapter 35, Laws of 2001 limits the secretary's authority to enter into agreements with other jurisdictions for supervision of offenders.

[2001 c 35 § 5.]

RCW 9.94A.74504
Supervision of transferred offenders -- Processing transfer applications. ***(Effective July 1, 2005.)***

(1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application.

[2005 c 400 § 1.]

NOTES:

Application -- 2005 c 400: "This act applies to offenders sentenced before, on, or after July 1, 2005." [2005 c 400 § 8.]

Effective date -- 2005 c 400: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 400 § 9.]

RCW 9.94A.750
Restitution.

This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons

for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23, RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support

obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

[2003 c 379 § 15; 2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14. Formerly RCW 9.94A.140.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Retroactive application -- 1995 c 231 §§ 1 and 2: "Sections 1 and 2 of this act shall apply retroactively to allow courts to set restitution in cases sentenced prior to July 23, 1995, if:

(1) The court failed to set restitution within sixty days of sentencing as required by RCW 9.94A.140 prior to July 23, 1995;

(2) The defendant was sentenced no more than three hundred sixty-five days before July 23, 1995; and

(3) The defendant is not unfairly prejudiced by the delay.

In those cases, the court may set restitution within one hundred eighty days of July 23, 1995, or at a later hearing set by the court for good cause." [1995 c 231 § 5.]

Purpose -- Severability -- 1994 c 271: See notes following RCW 9A.28.020.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- 1987 c 281: See note following RCW 7.68.020.

Comment

The 1995 Legislature extended the time for determining the amount of restitution from 60 days to 180 days after the sentencing hearing, or longer for good cause. This extension is retroactive to cases where the defendant was sentenced within a year before the effective date (i.e., on or after July 23, 1994) and restitution was not set within 60 days after that sentencing, unless the defendant would be unfairly prejudiced by the delay. In cases meeting that definition, the court may set restitution within 180 days of the effective date, or later for good cause. The same legislation prohibited the court from reducing the amount of restitution ordered because the offender may not be able to pay the full amount, required the court to identify each victim entitled to restitution and the amount due each victim, authorized the state or any victim to collect restitution through civil enforcement, and required that restitution collected be distributed proportionately to multiple victims.

Ordinarily the court's jurisdiction to enforce restitution expires ten years after the entry of the judgment and sentence or the offender's release from total confinement, whichever is later. The 1997 Legislature authorized the court to extend jurisdiction an additional ten years for payment of restitution.

The 1997 Legislature also required restitution, in cases of Rape of a Child 1, 2, or 3 in which the victim becomes pregnant, to include medical expenses and child support for up to 25 years.

RCW 9.94A.753
Restitution -- Application dates.

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on

the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23, RCW.

Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68, RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

[2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Retroactive application -- 1995 c 231 §§ 1 and 2: See note following RCW 9.94A.750.

Purpose -- Severability -- 1994 c 271: See notes following RCW 9A.28.020.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- 1987 c 281: See note following RCW 7.68.020.

Severability -- Effective date -- 1985 c 443: See notes following RCW 7.69.010.

Comment

The 1997 Legislature required the Department of Corrections to supervise compliance with payment of legal financial obligations for up to ten years after entry of the judgment and sentence or release from total confinement. The court was also authorized to extend the time for payment of legal financial obligations a subsequent ten years, but the Department is not responsible for supervision after the initial ten-year period.

RCW 9.94A.760
Legal financial obligations. ***(Effective July 24, 2005.)***

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation

pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations.

[2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

NOTES:

Intent -- Purpose--2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Effective date -- 2001 c 10: See notes following RCW 9.94A.505.

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Comment

The 1995 Legislature extended the time for determining the amount of restitution from 60 days to 180 days after the sentencing hearing, or longer for good cause. This extension is retroactive to cases where the defendant was sentenced within a year before the effective date (i.e., on or after July 23, 1994) and restitution was not set within 60 days after that sentencing, unless the defendant would be unfairly prejudiced by the delay. In cases meeting that definition, the court may set restitution within 180 days of the effective date, or later for good cause. The same legislation prohibited the court from reducing the amount of restitution ordered because the offender may not be able to pay the full amount, required the court to identify each victim entitled to restitution and the amount due each victim, authorized the state or any victim to collect restitution through civil enforcement, and required that restitution collected be distributed proportionately to multiple victims. This legislation was apparently in response to State v. Krall, 125 Wn. 2d 146 (1994).

The 1995 Legislature also authorized the Department of Labor and Industries, which administers the State Crime Victim Compensation Program, to petition the court to order restitution on behalf of a victim entitled to compensation by the program. The same legislation provided an administrative mechanism for the Department to recover from offenders the amounts paid to victims under the program.

Ordinarily the court's jurisdiction to enforce restitution expires ten years after the entry of the judgment and sentence or the offender's release from total confinement, whichever is later. The 1997 Legislature authorized the court to extend jurisdiction an additional ten years for payment of restitution.

The 1997 Legislature also required restitution, in cases of Rape of a Child 1, 2, or 3 in which the victim becomes pregnant, to include medical expenses and child support for up to 25 years.

RCW 9.94A.7601
"Earnings," "disposable earnings," and "obligee" defined.

As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned.

[1991 c 93 § 1. Formerly RCW 9.94A.200005.]

NOTES:

Retroactive application -- 1991 c 93: "The provisions of this act are retroactive and apply to any actions commenced but not final before May 9, 1991." [1991 c 93 § 15.]

Captions not law -- 1991 c 93: "Captions as used in this act constitute no part of the law." [1991 c 93 § 12.]

RCW 9.94A.7602
Legal financial obligation -- Notice of payroll deduction -- Issuance and content.

(1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or

(b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.760 and 9.94A.7601 through 9.94A.761.

[1991 c 93 § 3. Formerly RCW 9.94A.200010.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7603
Legal financial obligations -- Payroll deductions -- Maximum amounts withheld, apportionment.

(1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally.

[1991 c 93 § 4. Formerly RCW 9.94A.200015.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7604
Legal financial obligations -- Notice of payroll deduction -- Employer or entity rights and responsibilities.

(1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

[1991 c 93 § 5. Formerly RCW 9.94A.200020.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7605
Motion to quash, modify, or terminate payroll deduction -- Grounds for relief.

(1) The offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one

month.

(2) Satisfactions by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect.

[1991 c 93 § 6. Formerly RCW 9.94A.200025.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7606
Legal financial obligations -- Order to withhold and deliver -- Issuance and contents.

(1) The department may issue to any person or entity an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department shall also, on or before the date of service of the order to withhold and

deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver.

[1991 c 93 § 7. Formerly RCW 9.94A.200030.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7607
Legal financial obligations -- Order to withhold and deliver -- Duties and rights of person or entity served.

(1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding.

[1991 c 93 § 8. Formerly RCW 9.94A.200035.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7608
Legal financial obligations -- Financial institutions -- Service on main office or branch, effect -- Collection actions against community bank account, court hearing.

An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department contesting the withholding of his or her interest in the account or funds. The department shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department is authorized to proceed with the collection action.

[1991 c 93 § 9. Formerly RCW 9.94A.200040.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7609
Legal financial obligations -- Notice of debt -- Service or mailing -- Contents -- Action on, when.

(1) The department may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owned.

(6) The department shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender.

[1991 c 93 § 10. Formerly RCW 9.94A.200045.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.761
Legal financial obligations -- Exemption from notice of payroll deduction or order to withhold and deliver.

Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld.

[1991 c 93 § 11. Formerly RCW 9.94A.200050.]

NOTES:

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

RCW 9.94A.7701
Legal financial obligations -- Wage assignments -- Petition or motion.

A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment.

[1989 c 252 § 9. Formerly RCW 9.94A.2001.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7702
Legal financial obligations -- Wage assignments -- Answer.

Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.7701, the court shall issue a wage assignment order as provided in RCW 9.94A.7704 and including the information required in RCW 9.94A.7701, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.7706 within twenty days after service of the order upon the employer.

[1989 c 252 § 10. Formerly RCW 9.94A.2002.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7703
Legal financial obligations -- Wage assignments -- Amounts to be withheld.

(1) The wage assignment order in RCW 9.94A.7702 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

[1989 c 252 § 11. Formerly RCW 9.94A.2003.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7704
Legal financial obligations -- Wage assignments -- Rules.

The department shall develop a form and adopt rules for the wage assignment order.

[1989 c 252 § 12. Formerly RCW 9.94A.2004.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7705
Legal financial obligations -- Wage assignments -- Employer responsibilities.

(1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.7703. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

[1989 c 252 § 13. Formerly RCW 9.94A.2005.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7706
Legal financial obligations -- Wage assignments -- Form and rules.

The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer.

[1989 c 252 § 14. Formerly RCW 9.94A.2006.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7707
Legal financial obligations -- Wage assignments -- Service.

(1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 9.94A.7706, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy.

[1989 c 252 § 15. Formerly RCW 9.94A.2007.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7708
Legal financial obligations -- Wage assignments -- Hearing -- Scope of relief.

In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfactions by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order.

[1989 c 252 § 16. Formerly RCW 9.94A.2008.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.7709
Legal financial obligations -- Wage assignments -- Recovery of costs, attorneys' fees.

In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

[1989 c 252 § 17. Formerly RCW 9.94A.2009.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

RCW 9.94A.771
Legal financial obligations -- Wage assignments -- Sentences imposed before July 1, 1989.

For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94A.634.

[1989 c 252 § 18. Formerly RCW 9.94A.201.]

NOTES:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Comment

The preceding sections were passed by the 1989 Legislature, effective July 1, 1990, to set criteria for collecting legal financial obligations by the Department of Corrections. RCW 9.94A.201 was effective in 1989 but stayed action against offenders in noncompliance with their payments on legal financial obligations until January 1990.

RCW 9.94A.772
Legal financial obligations -- Monthly payment, starting dates--Construction.

Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment.

[2004 c 121 § 4; 2003 c 379 § 22.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

RCW 9.94A.775
Legal financial obligations -- Termination of supervision -- Monitoring of payments.

If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of community placement, community custody, or community supervision,

or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of community placement, community custody, or community supervision, the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section.

[2003 c 379 § 17.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

RCW 9.94A.780
Offender supervision assessments.

(1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary

in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95, RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(5) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community placement, community custody, or community supervision, the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760.

[2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.800
Sex offender treatment in correctional facility.

(1) When an offender commits any felony sex offense on or after July 1, 1987, and on or before July 1, 1990, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or

9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(c) Report as directed to the court and a community corrections officer;

(d) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department.

Nothing in this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987.

(2) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

[2000 c 28 § 34.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Comment

The 1986 Legislature amended the provisions for inpatient treatment of sex offenders. The sex offender treatment program was transferred from the Department of Social and Health Services to the Department of Corrections. The 1987 Legislature clarified that the transfer of the treatment program applies to offenders whose crimes were committed after July 1, 1987. Offenders whose crimes were committed before that date were still to be sent to the programs at Eastern or Western State Hospitals, but all sex offenders were to be transferred to the Department of Corrections by 1993. A provision requiring that the treatment provider find the offender amenable to treatment went into effect in 1986.

The 1990 Legislature revised several aspects of the Special Sex Offender Sentencing Alternative. These include increasing the accountability of the treatment provider to the court, changing the maximum sentence allowed from six years to eight years, increasing the length of community

supervision and treatment and directing that, after July 1991, examinations and treatment under SSOSA be conducted by certified sex offender treatment providers.

RCW 9.94A.810
Transition and relapse prevention strategies.

Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

[2000 c 28 § 35.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.820
Sex offender treatment in the community.

(1) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155, RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

[2004 c 38 § 10; 2000 c 28 § 36.]

NOTES:

Effective date -- 2004 c 38: See note following RCW 18.155.075.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.830
Legislative finding and intent -- Commitment of felony sexual offenders after July 1, 1987.

The legislature finds that the sexual offender treatment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.

Therefore, no person committing a felony sexual offense on or after July 1, 1987, may be committed under *RCW 9.94A.505(7)(b) to the department of social and health services at eastern state hospital or western state hospital. Any person committed to the department of social and health services under *RCW 9.94A.505(7)(b) for an offense committed before July 1, 1987, and still in the custody of the department of social and health services on June 30, 1993, shall be transferred to the custody of the department of corrections. Any person eligible for evaluation or treatment under *RCW 9.94A.505(7)(b) shall be committed to the department of corrections.

[1987 c 402 § 2; 1986 c 301 § 1. Formerly RCW 9.94A.123.]

NOTES:

***Reviser's note:** RCW 9.94A.505 (formerly RCW 9.94A.120) was amended by 1995 c 108 § 3, which deleted subsection (7)(b).

Effective date -- 1987 c 402: See note following RCW 9.94A.505.

RCW 9.94A.835
Sexual motivation special allegation -- Procedures.

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in *RCW 9.94A.030(33) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court

shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in *RCW 9.94A.030(33)(a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

[1999 c 143 § 11; 1990 c 3 § 601. Formerly RCW 9.94A.127.]

NOTES:

***Reviser's note:** RCW 9.94A.030 was amended by 1999 c 352 § 8, changing subsection (33)(c) to subsection (33)(d). RCW 9.94A.030 was also amended by 1999 c 196 § 2, changing subsection (33) to subsection (36). RCW 9.94A.030 was subsequently amended by 2000 c 28 § 2, changing subsection (36) to subsection (37), effective July 1, 2001. RCW 9.94A.030 was subsequently amended by 2001 2nd sp.s. c 12 § 301, changing subsection (37) to subsection (38). RCW 9.94A.030 was subsequently amended by 2005 c 436 § 1, changing subsection (38) to subsection (41). However, the 2005 c 436 § 1 amendments expire July 1, 2006.

Effective date -- Application -- 1990 c 3 §§ 601-605: "(1) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990.

(2) For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990." [1990 c 3 § 606.]

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Comment

A finding of sexual motivation was authorized by the 1990 Legislature, to be applicable to any offense except a sex offense.

RCW 9.94A.840
Sex offenders -- Release from total confinement -- Notification of prosecutor.

(1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from

total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

[1992 c 45 § 1; 1990 c 3 § 122. Formerly RCW 9.94A.151.]

NOTES:

***Reviser's note:** RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (1) to subsection (12). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (12) to subsection (16).

Severability -- 1992 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 45 § 8.]

Application -- 1992 c 45: "This act applies to sex offenses committed on, before, or after March 26, 1992." [1992 c 45 § 10.]

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9.94A.843
Sex offenders -- Release of information -- Immunity.

The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550.

[1990 c 3 § 123. Formerly RCW 9.94A.152.]

NOTES:

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9.94A.844
Sex offenders -- Discretionary decisions -- Immunity. ***(Effective July 24, 2005.) (Expires July 1, 2006.)***

Law enforcement agencies and the department of corrections are immune from civil liability for damages from discretionary decisions made under chapter 436, Laws of 2005 if they make a good faith effort to comply with chapter 436, Laws of 2005.

[2005 c 436 § 5.]

NOTES:

Expiration date -- 2005 c 436: See note following RCW 9.94A.030.

RCW 9.94A.846
Sex offenders -- Release of information.

In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections.

[1990 c 3 § 124. Formerly RCW 9.94A.153.]

NOTES:

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9.94A.850
Sentencing guidelines commission -- Established -- Powers and duties. ***(Effective July 24, 2005.)***

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards

are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40, RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05, RCW.

[2005 c 282 § 19. Prior: 2002 c 290 § 22; 2002 c 237 § 16; 2002 c 175 § 16; 2000 c 28 § 41; prior: 1999 c 352 § 1; 1999 c 196 § 3; prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4. Formerly RCW 9.94A.040.]

NOTES:

Effective date -- 2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Effective dates -- 1996 c 232: "(1) Sections 1 through 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 28, 1996].

(2) Section 9 of this act takes effect July 1, 1996." [1996 c 232 § 12.]

Effective date -- 1995 c 269: "Sections 101, 201, 302, 303, 401, 402, 501 through 505, 601, 701, 801, 901, 1001, 1101, 1201 through 1203, 1301, 1302, 1401 through 1407, 1501, 1601, 1701, 1801, 1901, 1902, 2001, 2101, 2102, 2201 through 2204, 2301, 2302, 2401, 2501, 2601 through 2608, 2701, 2801 through 2804, 2901 through 2909, 3001, 3101, 3201, 3301, 3401, and 3501 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 269 § 3604.]

Part headings not law -- Severability -- 1995 c 269: See notes following RCW 13.40.005.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Comment

The 1996 Legislature updated and expanded the Commission's responsibilities to reflect the fact that a determinate sentencing system had been in place for over a decade, and also that there was a need for independent review of juvenile disposition standards and related issues in the juvenile justice system.

The 1997 Legislature expanded the permissible sentence ranges for Murder 2 at Seriousness Level XIII, reducing the allowable minimum to 50% of the maximum, consistent with an amendment to the sentencing grid (RCW 9.94A.310) that increased the maximum in the standard range. However, the 1997 Legislature also included additional offenses at Level XIII without authorizing an expansion of the permissible range for those offenses. The 1999 Legislature subsequently remedied this inconsistency, amending the sentencing grid to place Murder 2 alone at Level XIV with its own "range width," returning Level XIII to its original standard ranges and adjusting the upper seriousness levels accordingly. See RCW 9.94A.310.

The 1999 Legislature, enacting the Offender Accountability Act, directed the Sentencing Guidelines Commission to formulate community custody ranges to be included in sentences for offenses committed on or after July 1, 2000. Through its rulemaking authority, the Commission adopted community custody ranges, which became effective July 1, 2000, and are published in WAC 437.20.010.

RCW 9.94A.855
Sentencing guidelines commission -- Research staff -- Data, information, assistance -- Bylaws -- Salary of executive officer. ***(Effective July 24, 2005.)***

The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the indeterminate sentence review board, the administrative office of the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040.

[2005 c 282 § 20; 1999 c 143 § 10; 1982 c 192 § 3; 1981 c 137 § 5. Formerly RCW 9.94A.050.]

RCW 9.94A.860
Sentencing guidelines commission -- Membership -- Appointments -- Terms of office -- Expenses and compensation.

(1) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) The chair of the indeterminate sentence review board, as an ex officio member;

(d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;

(e) Two prosecuting attorneys;

(f) Two attorneys with particular expertise in defense work;

(g) Four persons who are superior court judges;

(h) One person who is the chief law enforcement officer of a county or city;

(i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;

(j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;

(k) One person who is an elected official of a city government;

(l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the defense attorney members, of the association of superior court judges in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(3)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (2)(j),

(k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120. Members shall be compensated in accordance with RCW 43.03.250.

[2001 2nd sp.s. c 12 § 311; 1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6. Formerly RCW 9.94A.060.]

NOTES:

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective dates -- 1996 c 232: See note following RCW 9.94A.850.

Effective date -- 1993 c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1993]." [1993 c 11 § 2.]

Application -- 1988 c 157: See note following RCW 9.94A.030.

Legislative findings -- Severability -- Effective date -- 1984 c 287: See notes following RCW 43.03.220.

Comment

The 1993 Legislature expanded the voting membership of the Sentencing Guidelines Commission to 16 members. It added the chair of the Indeterminate Sentence Review Board. It also authorized the director of the Office of Financial Management to name a designee as a voting member of the Commission.

The 1996 Legislature modified the Commission's voting membership to reflect its new responsibilities in juvenile justice, to provide for local government representation and to assure representation of crime victims. Added as members were the Assistant Secretary of Social and Health Services for Juvenile Rehabilitation, a county juvenile court administrators, an elected official from county government, an elected official from city government and a citizen representative of crime victims. The Legislature removed the chair of the Clemency and Pardons Board as a member.

RCW 9.94A.865
Standard sentence ranges -- Revisions or modifications -- Submission to legislature.

Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years.

[1986 c 257 § 19; 1981 c 137 § 7. Formerly RCW 9.94A.070.]

NOTES:

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

RCW 9.94A.870
Emergency due to inmate population exceeding correctional facility capacity.

If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05, RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

[1999 c 143 § 13; 1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16. Formerly RCW 9.94A.160.]

NOTES:

Severability -- 1984 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 246 § 12.]

Effective date -- 1983 c 163: See note following RCW 9.94A.505.

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.875
Emergency in county jails population exceeding capacity.

If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A, RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05, RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

[1984 c 209 § 9. Formerly RCW 9.94A.165.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.880
Clemency and pardons board -- Membership -- Terms -- Chairman -- Bylaws -- Travel expenses -- Staff.

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board.

[1981 c 137 § 25. Formerly RCW 9.94A.250.]

NOTES:

Effective date -- 1981 c 137: See RCW 9.94A.905.

RCW 9.94A.885
Clemency and pardons board -- Petitions for review -- Hearing.

(1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to the elective rights to vote and to engage in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider written, oral, audio, or videotaped statements regarding the petition received, personally or by representation, from the individuals who receive notice pursuant to this section. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

[1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26. Formerly RCW 9.94A.260.]

NOTES:

Intent -- 1999 c 323: "The pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law. To assist the governor in gathering the facts necessary to the wise exercise of this power, the legislature created the clemency and pardons board.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, an intelligent recommendation on an application for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the legislature to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

The impact of the crime on the community must also be assessed when passing upon an application for clemency. The prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are uniquely situated to provide an accurate account of the offense and the impact felt by the community as a result of the offense. It is the intent of the legislature to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process." [1999 c 323 § 1.]

Effective date -- 1981 c 137: See RCW 9.94A.905.

Comment

The 1999 Legislature provided that the Clemency and Pardons Board may not recommend clemency until after a public hearing, and that the prosecutor in the county where the conviction was obtained must receive at least 30 days notice of such a hearing. The 30-day notice may be waived in cases where the Board must take timely action on a petition. As to victim's rights, reasonable efforts must be made to notify victims and witnesses of Board hearings, and victims and survivors of victims must be given adequate opportunities to present statements in person, by audio or videotape, in writing or through a representative at any hearing regarding an application for a pardon or commutation of a sentence. The 1999 Legislature also amended RCW 9.95.260 to provide the same notice and hearing requirements and victims' rights protections in connection with recommendations for clemency by the Indeterminate Sentence Review Board.

RCW 9.94A.890
Abused victim--Resentencing for murder of abuser.

(1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing offenders convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The offender was convicted for a murder committed prior to July 23, 1989;

(b) RCW 9.94A.535(1)(h), if effective when the offender committed the crime, would have

provided a basis for the offender to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the offender for the murder, did not consider evidence that the victim subjected the offender or the offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the offender in light of RCW 9.94A.535(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the offender committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed.

[2000 c 28 § 42; 1993 c 144 § 5. Formerly RCW 9.94A.395.]

NOTES:

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1993 c 144: See note following RCW 9.95.045.

Comment

In 1993, the Legislature enacted RCW 9.94A.395 to establish a procedure for reducing the sentences of certain offenders convicted of murder prior to the effective date of RCW 9.94A.390(1)(h) (July 23, 1989).

RCW 9.94A.905
Effective date of *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250,9.94A.260 -- Sentences apply to felonies committed after June 30, 1984.

*RCW 9.94A.080 through 9.94A.130, 9.94A.150 through9.94A.230 , and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984.

[1981 c 137 § 28.]

NOTES:

***Reviser's note:** The majority of chapter 9.94A, RCW was recodified by 2001 c 10 § 6. See Comparative Table for chapter 9.94A, RCW in the Table of Disposition of Former RCW Sections, Volume 0.

RCW 9.94A.910
Severability -- 1981 c 137.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1981 c 137 § 41.]

RCW 9.94A.920
Headings and captions not law -- 2000 c 28.

Part headings and section captions used in this act do not constitute any part of the law.

[2000 c 28 § 43.]

RCW 9.94A.921
Effective date -- 2000 c 28.

Sections 1 through 42 of this act take effect July 1, 2001.

[2000 c 28 § 46.]

RCW 9.94A.922
Severability -- 2000 c 28.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2000 c 28 § 47.]

RCW 9.94A.923
Nonentitlement.

Nothing in chapter 290, Laws of 2002 creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment.

[2002 c 290 § 26.]

NOTES:

Effective date -- 2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: See note following RCW 70.96A.350.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Severability -- 2002 c 290: See RCW 9.94A.924.

RCW 9.94A.924
Severability -- 2002 c 290.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2002 c 290 § 28.]

RCW 9.94A.925
Application -- 2003 c 379 §§ 13-27.

The provisions of sections 13 through 27, chapter 379, Laws of 2003 apply to all offenders currently, or in the future, subject to sentences with unsatisfied legal financial obligations. The provisions of sections 13 through 27, chapter 379, Laws of 2003 do not change the amount of any legal financial obligation or the maximum term for which any offender is, or may be, under the jurisdiction of the court for collection of legal financial obligations.

[2003 c 379 § 24.]

NOTES:

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

RCW 9.94A.930
Recodification.

The code reviser shall recodify sections within chapter 9.94A, RCW, and correct any cross-references to any such recodified sections, as necessary to simplify the organization of chapter 9.94A, RCW.

[2001 c 10 § 6.]

Digest of Court Cases Interpreting the Sentencing Reform Act

The following is a digest of the 2004-2005 Washington Supreme Court and Washington Court of Appeals' cases interpreting the Sentencing Reform Act (SRA) of 1981 (RCW Chapter 9.94A). This digest only includes cases decided up to August 1, 2005. There is a possibility that some cases decided after August 1, 2005, might have changed or affected in some way the courts' previous interpretations of the SRA.

The digest was prepared by the Criminal Justice Division of the Office of the Attorney General of Washington and not by the Sentencing Guidelines Commission. The Commission does not endorse nor necessarily agree with the interpretations of the court cases set forth in this digest. Any questions or concerns regarding this digest should be directed to the Criminal Justice Division of the Office of the Attorney General of Washington.

WASHINGTON SUPREME COURT

State v. Swecker, 115 P.3d 297 (July 14, 2005)

FACTS: Defendant was convicted in 2001 of first-degree murder and second-degree burglary. In calculating his offender score at sentencing, the judge separately counted 11 prior juvenile convictions for which the defendant was sentenced on the same day in 1996. The defendant argued that based on former RCW 9.94A.360(6)(a)(iii) (1995), which was in place at the time of his 11 prior juvenile convictions, his 11 juvenile convictions should have counted as only one conviction, as they all occurred on the same day. Defendant appealed his sentence and moved the superior court to amend his sentence based on errors in the calculation of his offender score.

ISSUES: Did the 2001 sentencing court err in counting separately the defendant's 11 prior juvenile convictions for which he was sentenced on the same day in 1996?

HOLDING: No. Even under the 1996 version of the Sentencing Reform Act of 1981 (SRA), multiple juvenile convictions sentenced on the same day did not disappear or wash out – former RCW 9.94A.360(6)(a)(ii) applied only to calculation of an individual's offender score at a given sentencing. Because prior juvenile convictions never disappeared under former RCW 9.94A.360(6)(a)(ii), the court's separate consideration of the defendant's 11 prior juvenile convictions in 2001, after the change in the law, was not a retroactive application of the 1997 amendment.

State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (May 26, 2005)

FACTS: In July 2000, the defendant pled guilty to one count of delivery of cocaine in violation of former RCW 69.50.401(a)(1). He also separately pled guilty to one count of possession of marijuana with intent to deliver. Prior to sentencing, the defendant requested a Drug Offender Sentencing Alternative (DOSA) sentence. The DOSA report was not in the record, but the parties appeared to agree the defendant was screened and found eligible for DOSA. The

prosecuting attorney argued that the defendant was not a good candidate for DOSA because of his extensive drug crime history (prior drug related convictions in 1992, 1994, 1999 and 2002) along with the current pending drug charges. Upon review of the defendant's criminal history and eligibility screening, the trial judge denied the motion for a DOSA program due to lack of funds for the DOSA program. The defendant was sentenced to 138 months confinement. During sentencing, the defendant did not protest the trial court's conclusion that the DOSA program lacked funds, or request an evidentiary hearing. On review, the defendant challenged, for the first time, the trial court's alleged failure to exercise discretion and reliance on a belief that the DOSA program was underfunded.

ISSUES: Was the trial court's categorical refusal to consider the defendant's request for a DOSA reversible error? Did the trial court rely on extrajudicial information at sentencing?

HOLDING: Yes, a trial court's refusal to consider the defendant's request for a DOSA as part of his sentence was reversible error. Where a defendant has requested a sentencing alternative authorized by statute, the categorical refusal to consider the sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal. State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). While no defendant is entitled to an exceptional sentence below the standard range, every defendant *is* entitled to ask the trial court to consider such a sentence and to have the alternative actually considered. Id. The trial judge did not articulate any other reasons for denying a DOSA other than the lack of funds, and specifically rejected the prosecutor's suggestion that more reasons (prior drug crimes) be placed in the record. It was clear that the judge's belief that the DOSA program was underfunded was the primary reason the DOSA was denied. Therefore, the trial court's refusal to meaningfully consider whether a sentencing alternative was appropriate was reversible error. The defendant's sentence was vacated and remanded for further proceedings.

State v. Law, 154 Wn.2d 85, 110 P.3d 717 (April 21, 2005)

FACTS: The defendant was charged with one count of first degree theft and three counts of forgery. Pursuant to a plea agreement, the State dismissed the three forgery counts and the defendant pled guilty to one count of second degree theft. Based on her past criminal history, the defendant's offender score was nine. The SRA established the defendant's standard range sentence for her offense as 22-29 months. The State and defendant jointly recommended a DOSA sentence for the midpoint of the standard range, as the defendant was volunteering in a 12-step narcotics recovery program. At sentencing, numerous witnesses testified to the defendant's substance abuse recovery, and that a lengthy incarceration might have an impact on the defendant's retention of her parental rights. Based on these positive character references, the trial judge imposed an exceptional downward sentence of six months, converting four months to community service and permitting the remaining two months to be served "on a work release or work crew basis or at Eleanor Chase House." The court further ordered 24 months of community custody, permitted the defendant's work in a 12-step program to count towards her community service requirement, and that the defendant pay restitution on all charges, including those which were dismissed. The State appealed the downward exceptional sentence, asserting as error that: (1) the sentence was based on facts unrelated to the offense or past criminal

history; (2) the conversion of more than 30 days of confinement to community service; and (3) the allowance that the defendant's work in her 12-step program could count towards her community service requirement. The Washington Court of Appeals agreed with the State, and reversed the trial court's sentence in an unpublished opinion.

ISSUES: Could the trial court properly base a downward exceptional sentence on factors that are personal and not related to the specific defendant's crime or past criminal history? Were the mitigating factors relied on by the trial court sufficient to distinguish a downward exceptional sentence for the crime in question from others in the same category? Per the SRA, can volunteer work (in the defendant's case, a 12-step program) count toward a community service requirement even though it did not benefit the community?

HOLDING: No, as to the first two issues; Yes, as to the third issue. The exceptional downward sentence was improperly based on factors that did not relate to the crime or past criminal history of the defendant. Factors which are personal and unique to the particular defendant are not relevant under the SRA. The SRA was designed to provide proportionate punishment, protect the public and provide rehabilitation, and presumptive ranges that are established for each crime represent the Legislature's judgment as to how best to accommodate those interests.

The Supreme Court also held, however, that the trial court's allowance of the defendant's work in her 12-step program to count toward her community service requirement was proper. The Supreme Court stated that the defendant's mere attendance at NA meetings was insufficient to satisfy her community service requirement, but that the trial court did not abuse its discretion when it permitted the defendant's continued work in her NA program to count as community service, finding that the defendant's work in support of NA is the type of service envisioned by the SRA.

State v. Hughes, Selvidge and Anderson, 154 Wn.2d 118, 110 P.3d 192 (April 14, 2005)

FACTS: Defendant Anderson was charged with 10 counts of third degree rape of a child. He pled guilty to one count of first degree child molestation, one count of second degree child molestation, and one count of incest. The standard sentence range for those offenses was 98-130 months for count I, 57-75 months for count II, and 46-61 months for count III. The defendant sought a Special Sex Offender Sentencing Alternative (SSOSA) in lieu of some of his prison sentence. The Department of Corrections (DOC) recommended that the defendant not receive a SSOSA sentence, but instead recommended an exceptional sentence of 240 months confinement with a 36-48 month term of community custody upon release. The State opposed an alternative SSOSA sentence and recommended the standard range consistent with the defendant's plea agreement. The trial court denied a SSOSA and imposed an exceptional sentence of 240 months for count I and the maximum of the standard range for counts II and III (75 and 61 months respectively) due to numerous aggravating factors. Anderson appealed his sentence.

Defendant Selvidge was charged and convicted with two counts of first degree child molestation. The standard sentencing range for each count was 149-198 months. An exceptional sentence of

222 months for each count was imposed based on aggravating circumstances. Selvidge appealed his sentence.

Defendant Hughes was charged and convicted of first degree theft for cutting down old growth cedar trees. Based on Hughes' offender score, the standard sentencing range would have been 3-9 months. The trial court imposed an exceptional sentence of 90 months based on numerous aggravating factors. Hughes sought direct review in the Washington Supreme Court.

ISSUES: Are the exceptional sentence provisions of the SRA facially unconstitutional following Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004)? If the sentence enhancement provisions of the SRA are not facially unconstitutional, are the enhanced sentences imposed on these defendants unconstitutional in light of Blakely? Can a sentence enhancement that is unconstitutional under Blakely be deemed harmless error? If the sentences at issue are unconstitutional, and harmless error analysis does not apply, what is the proper remedy?

HOLDING: The Supreme Court held that while the exceptional sentence provisions of the SRA are facially constitutional, the exceptional sentences at issue in these cases violated the defendants' Sixth Amendment rights, overruling State v. Smith, 123 Wn.2d 51, 56, 864 P.2d 1371 (1993) to the extent that it allows the "too lenient" conclusion to be made by judges. The Supreme Court also held that Blakely Sixth Amendment violations can never be harmless, and that empaneling juries on remand for re-sentencing would usurp the Legislature's authority. Thus, the appropriate remedy upon remand for re-sentencing is for the trial court to make findings whether there are facts necessary to support an exceptional sentence.

PRP of LaChapelle, PRP of Westfall, 153 Wn.2d 1, 100 P.3d 805 (November 18, 2004)

FACTS: Petitioner LaChapelle was convicted of first degree robbery and first degree kidnapping with a firearm enhancement. When the sentencing court calculated his offender score, it included two of his juvenile offenses in the definition of "criminal history." Westfall was convicted of forgery. The sentencing court also calculated his offender score to include a prior juvenile offense in the definition of his "criminal history." Both defendants challenged inclusion of their juvenile criminal adjudications in their criminal histories when sentenced by the superior court.

Prior to the 1997 SRA amendment, offenses committed before age 15 were often described as "washed out" because they were not included in defendants' criminal histories nor used to calculate offender scores. However, technically, the offenses never existed as criminal history in the first place, and therefore nothing existed to be washed out. The 1997 SRA amendment changed the definition of "criminal history" so that juvenile offenses committed both before and after the age of 15 no longer washed out and are to be included as prior offenses in the calculation of offender scores for current offenses. At sentencing, the trial court calculated LaChapelle's offender score by including his March 1995 juvenile offense, even though he was under 15 at the time and the crime was committed before the 1997 SRA amendment. As to

Westfall, the trial court calculated his offender score for each offense by including his March 1997 offense even though it was committed before the 1997 SRA amendment took effect.

ISSUES: Can the trial court count previously washed out juvenile criminal adjudications to be revived and included when computing SRA offender scores for current adult offenses?

HOLDING: No. The Supreme Court held that the 1997 amendment to the definition of "criminal history" in the Sentencing Reform Act of 1981 SRA did not apply retroactively to allow petitioners' previously washed out juvenile adjudications to be revived and included in their offender score calculations. The petitioners' prior juvenile adjudications before their 15th birthdays never counted as criminal history; so they technically never washed out because they never existed as criminal history under the SRA in effect at the time of their offenses. The Supreme Court adhered to its prior precedent established in State v. Cruz, 139 Wn.2d 186, 985 P.2d 384 (1999), State v. Smith, 144 Wn.2d 665, 30 P.3d 1245 (2001), and State v. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004), holding that washed out offenses as described in these cases may not be counted in calculating offender scores for offenses which occurred before the effective date of the 2002 amendment to the SRA. Thus, the defendant's cases were reversed and remanded for re-sentencing.

State v. Ross, Hunter and Legrone, 152 Wn.2d 220, 95 P.3d 1225 (August 12, 2004)

FACTS: Three defendants appealed calculation of their offender scores which were based on prior out-of-state and federal convictions which defendants acknowledged were comparable to state felonies.

Ross: A jury found Ross guilty of felony harassment, fourth degree assault, and four counts of unlawful imprisonment. At sentencing, Ross' counsel expressly acknowledged that his criminal history properly included a 1988 Texas burglary conviction and that the State had properly calculated his offender score as 9. Accordingly, the sentencing court calculated Ross' offender score as 9 for each offense based, in part, on his 1988 Texas conviction. On appeal, Ross argued that the sentencing court improperly calculated his offender score because the State failed to prove that his 1988 Texas conviction was comparable to a Washington State crime. Ross appealed his sentence.

Hunter: Hunter pled guilty to second degree attempted robbery. The State initially calculated his offender score as 5 based on five prior out-of-state convictions. Hunter disputed his offender score, arguing that two of his Oregon convictions were not comparable to Washington State crimes. Hunter also argued that due process and the SRA of 1981 required that the State prove by a preponderance of the evidence that his out-of-state convictions were comparable to Washington State felony crimes. At sentencing, the prosecutor conceded that the State could not prove that one of Hunter's Oregon drug convictions compared to a Washington State felony, and thus recommended that the sentencing court calculate Hunter's offender score as 4. In reply, Hunter's counsel conceded that Hunter's second challenged Oregon drug conviction was properly included in his offender score. The court calculated Hunter's offender score as 4. On appeal, Hunter argued that the sentencing court improperly calculated his offender score by

including prior out-of-state convictions that the State had failed to prove were comparable to Washington State felony crimes.

Legrone: A jury found Legrone guilty of possession with intent to deliver cocaine for events that occurred in October 2000. In his sentencing memorandum, Legrone's counsel included two prior federal drug convictions as part of Legrone's criminal history, but argued that the court should calculate the two convictions as one in his offender score. The sentencing court rejected this argument and counted both his federal convictions separately. Additionally, the court imposed three offender score points for each of Legrone's prior felony drug convictions in accordance with former RCW 9.94A.360(3) (2000), the statute in effect at the time Legrone committed his 2000 offense. The court calculated Legrone's offender score as 12. Legrone appealed.

The Washington Supreme Court granted review and consolidated Legrone's case with Ross and Hunter.

ISSUES: Did the State fail to prove at sentencing that the defendants' prior out-of-state and/or federal convictions were comparable to Washington State felony crimes and thus properly included in their offender scores, constituting legal error? Did the sentencing court's reliance on such acknowledgement violate the SRA or defendants' due process rights?

HOLDING: No, as to both issues. The Supreme Court held that a defendant's affirmative acknowledgment of the existence and comparability of prior out-of-state and/or federal convictions rendered further proof unnecessary. Thus, the sentencing court did not violate the SRA nor deny due process when including such offenses in their offender scores.

The Supreme Court also affirmed the Court of Appeals' holdings that the 2002 SRA amendments to RCW 9.94A.525(12) did not apply retroactively at sentencing for crimes committed before the amendments' effective date. See State v. McCarthy, 112 Wn. App. 231, 48 P.3d 1014 (2002), review denied, 148 Wn.2d 1011, 62 P.3d 889 (2003) and State v. Kane, 101 Wn. App. 607, 5 P.3d 741 (2000). Thus, the sentencing court's prospective application of the amendments did not violate Legrone's equal protection rights.

As to Ross, his petition was denied as moot as his supervision ended in 2003, and it was undisputed that the Supreme Court could not provide him with less confinement due to his lower offender score, as he had completed his sentence.

State v. Evans and Swenson, 154 Wn.2d 438, 114 P.3d 627 (June 16, 2005)

FACTS: Defendant Evans was convicted of first degree rape. Evans' standard range sentence for the crime was 149-198 months, plus 24 months for a deadly weapon enhancement. The trial court also found Evans acted with deliberate cruelty and excessive violence and imposed an exceptional sentence of 360 months. The trial court was affirmed on review, and the conviction became final in 1991. After Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) was announced, Evans sought collateral relief on the grounds that his sentence was clearly unconstitutional because the trial judge based it on facts that were not found by a jury beyond a reasonable doubt. The courts below denied relief, and the Supreme Court granted review to decide whether Blakely and/or Apprendi applied retroactively.

Defendant Swenson was convicted of first degree felony murder in 1995. Swenson's conviction became final before Blakely was announced. He already had a timely personal restraint petition pending, largely challenging the erroneous accomplice liability instruction used in his case. He also argued that his sentence was illegal based on Apprendi because the trial judge, instead of a jury, found the facts that led to his exceptional sentence. While Swenson's petition for collateral relief was under consideration, the United States Supreme Court announced Blakely. A motion to transfer this case was granted from the Court of Appeals primarily to decide whether Blakely applied retroactively to cases final after Apprendi but before Blakely.

ISSUES: Do the rulings in Blakely v. Washington and Apprendi v. New Jersey apply retroactively to convictions that were final before Blakely and Apprendi were announced?

HOLDING: The Supreme Court held that neither Blakely nor Apprendi applied retroactively on collateral review to convictions that were final when Blakely was announced. After Apprendi, every fact (other than the fact of a prior conviction) that increases the defendant's sentence beyond the statutory maximum may be used only if it was either proved beyond a reasonable doubt to the trier of fact at trial or admitted by the defendant. In Blakely, the Supreme Court clarified that the "statutory maximum" did not refer to the maximum sentence authorized by the legislature for the crime (as almost every court considering the issue had concluded). Instead, "statutory maximum" meant the maximum sentence a trial judge was authorized to give without finding additional facts - the top of the standard sentencing range.

WASHINGTON COURT OF APPEALS

State v. Murray, 116 P.3d 1072 (August 4, 2005)

FACTS: The defendant pled guilty to one count of manufacture of a controlled substance (methamphetamine). The standard range for his sentence was 96-120 months. The prosecutor recommended the trial court impose a DOSA sentence of 54 months of incarceration with 54 months of community custody. At sentencing, the defendant presented witnesses that stated that he "had turned his life around and he was clean and sober and working steadily" and had completed substance abuse programs and remained drug free. The trial court found that the

"new support environment" permitted it to vary the standard range and to compute a DOSA sentence with a midpoint lower than the standard range midpoint. The trial court concluded that the defendant was entitled to an exceptional sentence downward and over the State's objection, the court imposed a DOSA sentence of 44 months incarceration (one-half of the new midpoint) and 44 months of community custody (the remainder of the new midpoint). The State appealed.

ISSUES: Did the trial court err in imposing an exceptional downward sentence without substantial and compelling reasons and in creating a hybrid DOSA/exceptional sentence?

HOLDING: Yes. DOSA was created as a treatment-based alternative for certain drug offenders. A DOSA sentence is an alternative form of standard range sentence, not an exceptional sentence. Generally, "a[n] exceptional sentence is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category." State v. Pennington, 112 Wn.2d 606, 610, 772 P.2d 1009 (1989). The Court of Appeals held in this case that "[W]e will reverse an exceptional sentence on appeal only if we find that the reasons relied upon by the sentencing court are not supported by the record under a clearly erroneous standard; that these reasons do not justify an exceptional sentence under a de novo standard of review; or that the sentence is clearly excessive or too lenient under an abuse of discretion standard," citing Pennington, 112 Wn.2d at 608 and State v. Jackson, 150 Wn.2d 251, 273-74, 76 P.3d 217 (2003). A trial court's subjective conclusion that the presumptive range does not adequately address rehabilitative concerns or the personal characteristics of the offender is not a substantial and compelling reason justifying a departure. State v. Allert, 117 Wn.2d 156, 169, 815 P.2d 752 (1991). See State v. Pascal 108 Wn.2d 125, 137-38, 736 P.2d 1065 (1987). The findings of the trial court in this case did not address how the circumstances of the defendant's crime distinguished it from other crimes in the same category. Each finding reflected the trial court's subjective opinion that the presumptive range did not adequately meet the defendant's personal circumstances. An extraordinary sentence based on such an opinion is not authorized under the SRA. Thus, the Court of Appeals vacated the sentence and remanded for re-sentencing to allow the trial court to exercise its discretion again, but instructed the trial court not to construct a "hybrid" of an exceptional sentence and a DOSA sentence.

State v. Brown, 116 P.3d 400 (July 21, 2005)

FACTS: The defendant was convicted in Spokane County Superior Court of second degree robbery. He appealed his conviction on the bases that there was insufficiency of the evidence to support his conviction, and that the trial court's finding that he was on probation, thus increasing his offender score, violated Blakely. The State cross-appealed as to the defendant's offender score as well, contending that the trial court erred in declining to treat the defendant's three felony convictions in Florida as adult convictions for the purposes of the defendant's offender score calculation.

ISSUE #1: Did the trial court's offender score determination in the defendant's case violate the Sixth Amendment under Blakely because it was not determined by a jury, but instead was based on the trial court's finding that the defendant was on probation, thus increasing his offender score?

HOLDING: No. The Blakely decision does not purport to impact Washington's offender scoring system. Judicial fact-finding is permitted when establishing recommended standard range sentences. Moreover, the Court of Appeals found that "because the fact of community placement arises out of a prior conviction, constitutional considerations under Blakely do not require that matter to be found by a jury beyond a reasonable doubt," citing to Blakely, 124 S. Ct. at 2536.

ISSUE #2: Did the trial court err in declining to treat the defendant's three felony convictions in Florida as adult convictions for purposes of the defendant's offender score calculation? (The offenses were committed as a juvenile, but the defendant was convicted in adult court after he turned 18.)

HOLDING: Under the SRA, foreign convictions are classified according to "comparable offense definitions and sentences provided by Washington law." RCW 9.94A.525(3). If the elements of the foreign conviction are comparable to the elements of a Washington statute in effect when the crime was committed, the prior conviction is included in the offender score. State v. Mutch, 87 Wn. App. 433, 436-37, 942 P.2d 1018 (1997). The SRA does not include a comparison of criminal procedures. State v. Morley, 134 Wn.2d 588, 596, 952 P.2d 167 (1998). Citing Morley, the Court of Appeals found that requiring out-of-state procedures to conform to Washington procedures before the convictions arising from them could be counted under the SRA is contrary to the purposes of the SRA, which was designed to "ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history," as every out-of-state conviction would be excluded from consideration by this requirement. "More specifically, '[t]he purpose of the offender score statute is to ensure that defendants with equivalent prior convictions are treated the same way, regardless of whether their prior convictions were incurred in Washington or elsewhere,'" quoting State v. Villegas, 72 Wn. App. 34, 38-39, 863 P.2d 560 (1993). The Court of Appeals remanded the case for the trial court to compare the elements of the three Florida felony convictions under RCW 9.94A.525(3) without consideration of procedure.

State v. Crawford, 115 P.3d 387 (July 12, 2005)

FACTS: Defendant was convicted in Pierce County Superior Court of first degree robbery and second degree assault. Before trial, both the prosecutor and defense counsel knew about the defendant's previous Washington conviction for second degree robbery, as well as his previous Kentucky conviction for first degree sex abuse. Each realized that the Washington conviction was a "strike," but neither investigated the Kentucky conviction enough to know that it might be a "strike" also. Accordingly, neither the State nor defense counsel provided the defendant with any notice that he might be subject to a mandatory minimum sentence of life without the possibility of parole. A jury found the defendant guilty as charged. Approximately one month later, the prosecutor and defense counsel realized that the defendant might have two prior "strikes," and defense counsel notified him for the first time that he might be subject to a mandatory minimum sentence of life without parole. The defendant filed a motion for new counsel, which was granted, as well as a post-trial motion for dismissal or new trial. Following a

hearing, the trial court denied the defendant's motion. The trial court then imposed a mandatory sentence of life in prison without parole or new trial.

ISSUES: Were the defendant's procedural due process rights violated when he was sentenced to a mandatory minimum term of life without parole under the Persistent Offender Accountability Act without any notice, before or during trial, that such a sentence was even possible?

HOLDING: Yes. It was fundamentally unfair for the State not to notify the defendant before trial that he may be subject to a mandatory sentence of life without parole. The person needs to know that such a sentence is possible when deciding how intensively to investigate, when deciding how intensively to plea bargain, and when deciding whether trial or plea is the better alternative. The Court of Appeals stated in this case that "[I]ndeed, it 'shocks the conscience' to put a person on trial for the remainder of his natural life without giving him *any* notice of that fact." Thus, the Court of Appeals concluded that the defendant was denied procedural due process, vacated the judgment and remanded for further proceedings.

State v. Labarbera, 115 P.3d 1038 (July 7, 2005)

FACTS: The defendant was charged with first degree kidnapping (count I), first degree rape (count II) first degree rape (count III), and first degree burglary (count IV). The State dismissed counts I and IV because the statute of limitations had expired. That same day the defendant waived his right to a jury trial. At sentencing, the defendant argued that the State had failed to prove his criminal history. The State responded by submitting some certified copies of prior Pierce County and California judgments and sentences, but failed to submit judgments and sentences for all of his prior convictions. Therefore, the State had to provide additional evidence to support the other out-of-state convictions. The State provided a copy of a pre-sentence investigation (PSI) report and a District Court Information System (DISCIS) printout showing the convictions were reliable documents to prove the defendant's criminal history by a preponderance of the evidence. The defendant also argued that the trial court failed to perform a comparability analysis between his California conviction and the elements of a comparable Washington offense.

ISSUES: Was defendant's PSI and DISCIS printouts adequate to establish existence of these convictions by a preponderance of the evidence? Did the sentencing court's failure to consider on the record additional documents submitted by the State regarding defendant's out-of-state convictions require a remand for re-sentencing for a comparability analysis?

HOLDING: Yes as to the first issue and No as to the second. The PSI and DISCSI printouts were adequate to establish existence of the prior convictions by a preponderance of the evidence, but the sentencing court's failure to consider on the record, additional documents submitted by the State regarding defendant's out-of-state conviction, required remand for re-sentencing for comparability analysis based on information before the sentencing court at the original sentencing.

State v. Weber, 127 Wn. App. 879, 112 P.3d 1287 (June 6, 2005)

FACTS: Defendant was convicted by jury verdict of second degree attempted murder and first degree assault, both while armed with a firearm, and first degree unlawful possession of a firearm. The superior court vacated the assault conviction based on double jeopardy. Defendant appealed based on the use of his prior juvenile adjudications during sentencing without findings by a jury (as well as other issues), and the State cross-appealed.

ISSUE #1: Did the trial court err in excluding one of the defendant's prior juvenile adjudications in calculating his offender score because it "washed out" under a prior version of the SRA?

HOLDING: Yes. The prior juvenile adjudications are entitled to be considered by the trial court at sentencing in the same manner as prior adult convictions. Juvenile adjudications that meet constitutionally-required safeguards fall within the prior convictions exception set out in Almendarez-Torres v. United States, 523 U.S. 224, 244, 118 S. Ct. 1219, 1231, 140 L. Ed. 2d 350 (1998) and upheld in Apprendi and Blakely.

ISSUE #2: Did the trial court err in vacating the first degree assault conviction rather than the second degree attempted murder conviction, based on double jeopardy?

HOLDING: Yes. The Court of Appeals held that to remedy a double jeopardy violation presented when two convictions punish the same offense, the court must vacate the crime carrying the lesser sentence. Thus, the trial court was required to vacate the less serious offense (second degree attempted murder) rather than the more serious offense (first degree assault) as determined by three factors: standard sentence range, seriousness level, and class of felony. The Court of Appeals observed that the most serious offense is the offense with the most serious consequence for the offender, and that the remedy for a double jeopardy violation should not create a paradoxical result or interfere with the interests of justice. In this case, if the defendant had been charged with and convicted of only assault, he would have faced the longer sentence. If the two convictions did not violate double jeopardy and were ordered to run concurrently, he would have faced the longer sentence. Thus, comparing sentence ranges in this case shows that the assault conviction had a more serious consequence for the defendant, making second degree attempted murder the conviction to vacate. In sum, the Court of Appeals affirmed in part, reversed in part, and remanded.

PRP of Tran and Roberts, 154 Wn.2d 323, 111 P.3d 1168 (May 19, 2005)

FACTS: Petitioners Tran and Roberts filed personal restraint petitions alleging the Department of Corrections erroneously imposed an additional 60 months of "flat time" (mandatory minimums) for their convictions for first degree assault with a deadly weapon. This "flat time" made them ineligible for the earned early release credit, thus making it likely that they would spend substantially more time in DOC custody than their sentences should allow. Petitioners argued that the imposition of flat time under former RCW 9.94A.120(4) was improper as offenders serving "flat time" are not eligible for earned early release time, community custody,

furlough, home detention, partial confinement, work crew, work release, or any other form of early release. DOC maintained that a first degree assault conviction, in conjunction with a deadly weapon enhancement, implicates this provision.

ISSUES: Can DOC require an inmate to serve the first five years of a sentence for first degree assault as "flat time" under former RCW 9.94A.120(4) rendering them ineligible for early release and likely resulting in substantially more time in DOC custody then their sentences should allow? Was this error a fundamental defect that resulted in a miscarriage of justice?

HOLDING: (1) No, DOC cannot require an inmate to serve flat time for a first degree assault conviction under former RCW 9.94A.120(4). (2) Yes, DOC's error constituted a fundamental defect that inherently resulted in a miscarriage of justice. The serving of "flat time" for first degree assault convictions left defendants ineligible for the earned early release credit of which they might otherwise have taken advantage. Also, as a result of serving the flat time, the offenders were likely to spend more time in DOC custody than their sentences should allow.

State v. Hagar, 126 Wn. App. 320, 105 P.3d 65 (April 26, 2005)

FACTS: The defendant, per his guilty plea agreement, received exceptional sentences on three counts of first degree theft. The sentencing court found that the defendant had committed a major economic offense and imposed concurrent exceptional sentences of 30 months. These sentences were above the standard range of three to nine months for these crimes. The defendant then appealed, contending that his exceptional sentences were void because Blakely renders the SRA's exceptional sentence statutes facially invalid. While the defendant's appeal was pending, the U.S. Supreme Court decided Blakely. The defendant then argued that his sentences must be reversed in light of Blakely, since a judge, not a jury, found the facts supporting the sentences and did so without finding those facts beyond a reasonable doubt. The State responded that the sentences do not violate Blakely because the defendant stipulated to the facts supporting the sentences and thus waived his right to a jury.

ISSUES: When a defendant pleads guilty, is the State free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial fact-finding?

HOLDING: Yes. Nothing prevents a defendant from waiving his/her Apprendi rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial fact-finding. If appropriate waivers are procured, States may continue to offer judicial fact-finding as a matter of course to all defendants who plead guilty. Here, the defendant's stipulation to real facts did not validly waive his Sixth Amendment rights under Blakely.

State v. Osman, 126 Wn. App. 575, 108 P.3d 1287 (March 20, 2005)

FACTS: The defendant, a non-citizen, pled guilty to three counts of second degree incest. He requested sentencing under the Special Sex Offender Sentencing Alternative (SSOSA). Upon consideration of his non-citizen status, the sentencing court rejected the defendant's request, based on information that the defendant could be deported if released from State custody and, therefore, would not receive treatment. The defendant argued that the trial court violated RCW 9.94A.340 and violated his equal protection rights when it considered his status as a non-citizen and his possible deportation status when denying his SSOSA request.

ISSUES: Did the trial court violate the SRA when it considered defendant's non-citizen status in denying his SSOSA request? Did the trial court violate equal protection principles when it considered defendant's non-citizen status in denying his SSOSA request?

HOLDING: No, as to both issues. The court's exercise of discretion in making a SSOSA determination is not limited to consideration of the factors set out in the SSOSA statute. State v. Frazier, 84 Wn. App. 752, 753, 930 P.2d 345 (1997). The trial court considered whether the defendant's particular status as a non-citizen created the potential for deportation which would render a SSOSA sentence unworkable. It resolved that the SSOSA sentence was not appropriate because it would not guarantee that the defendant would receive either punishment or treatment. The trial court's analysis did not consider the defendant's nationality or race, but instead focused on whether the defendant would be able to fulfill the SSOSA requirements. Thus, the trial court did not commit procedural error under the SRA.

State v. Monroe, 126 Wn. App. 435, 109 P.3d 449 (March 15, 2005)

FACTS: The defendant pled guilty to two counts of first degree rape, one count of first degree burglary with sexual motivation, five counts of first degree kidnapping, and one count of second degree assault. The sentencing requirements of RCW 9.94A.712 applied to the defendant's sentence on the rape counts (counts I and II) and the burglary with sexual motivation count. RCW 9.94A.712 directed the superior court to sentence the defendant to a maximum term of life on those counts and to set a determinate minimum term. In exchange for the defendant's plea of guilty, the State agreed to recommend that the court set the defendant's determinate minimum term sentences at 511 months, the top of his standard range. The court found that the defendant's crimes involved deliberate cruelty, victims who were particularly vulnerable, and a high degree of sophistication and planning. Based on these aggravating factors, the superior court sentenced the defendant to serve a maximum term of life with a determinate minimum term of 651 months. He appealed.

ISSUES: Under Blakely, is a defendant entitled to have a jury find disputed facts beyond a reasonable doubt before the sentencing court can use such facts to impose a minimum term above his standard range under RCW 9.94A.712(3)?

HOLDING: Yes. The non-persistent offender statute did not give the trial court authority to impose a minimum term in excess of the 384-511 month standard range without satisfying the jury trial requirement set out in Blakely, in which a defendant is not eligible to receive a sentence in excess of the standard range unless disputed facts, other than prior convictions, are proved to a

jury beyond a reasonable doubt (or the defendant stipulates to the facts or otherwise waives the sentencing jury requirement). The Court of Appeals remanded the case to the superior court for re-setting of the defendant's minimum term.

State v. Jones and Thomas, 126 Wn. App. 136, 107 P.3d 755 (February 28, 2005)

FACTS: Defendants Jones and Thomas' sentences were increased based on judicial findings that they were on community placement at the time of their convictions. Both defendants appealed, arguing that their present crimes, which resulted in increased sentences, did not fall within the narrow exception of a "prior conviction" for purposes of the U.S. Supreme Court's decision in Blakely. Blakely held that other than a prior conviction, the defendant has the right to have a jury decide factual issues that would increase his or her sentence. Thus, whether defendants were on community placement was a factual determination subject to the requirement that a jury make the determination beyond a reasonable doubt.

ISSUES: Did the judge's factual determination that the defendants were on community placement at the time of their current offenses violate the defendants' right to trial by jury?

HOLDING: Yes. Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. Thus, the determinations by the sentencing judges in these cases that the defendants were on community placement at the time of their offenses do not fall within the narrow exception for the fact of a prior conviction for purposes of Blakely.

State v. Winings, 126 Wn. App. 75, 107 P.3d 141 (February 23, 2005)

FACTS: In March 2003, while intoxicated, the defendant swung a sword (which was longer than three inches) and proceeded to stab his victim in the toe, through his shoe, with the sword. The defendant was charged and convicted of second degree assault while armed with a deadly weapon. At sentencing, the State offered evidence that the defendant had five prior California felony convictions from 1992, and that the defendant had pled guilty to each of those offenses. The State submitted an abstract of judgment which showed that the defendant was convicted of four of the 1992 California offenses. These documents were not offered as exhibits, but were presented to the court at the time of sentencing. The defendant argued that the documents purporting to establish his criminal history were neither offered nor admitted into evidence and thus cannot be included in his offender score. The defendant also argued that these offenses were "washed out," that the State had failed to establish his out-of-state convictions, and had failed to provide any evidence regarding the classification of his convictions.

ISSUES: Was the State's submitted documents of the defendant's prior out-of-state convictions adequate for the purpose of computing his offender score?

HOLDING: Yes. The use of a prior conviction as a basis for sentencing under the SRA is constitutionally permissible if the State proves the existence of the prior conviction by a

preponderance of the evidence. The State bears the burden of establishing the classification of prior out-of-state convictions, but the sentencing court may properly rely on a stipulation or acknowledgment to support a determination or classification. The State's submission of documents, which included the defendant's statement on plea of guilty to the five offenses, coupled with copies of the felony complaints for the five offenses as well as a certified abstract of judgment which showed that he was convicted of four of the offenses and a minute order which showed that he had been sentenced on the fifth offense, amply demonstrated that the defendant had been convicted of the five 1992 California offenses.

As the Washington Supreme Court held in State v. Varga, 151 Wn.2d 179, 183, 86 P.3d 139 (2004), the 2002 amendments to the SRA required that sentencing courts include previously "washed out" prior convictions in calculating a defendant's offender score at sentencing for crimes committed on or after June 13, 2002. Since the defendant committed his crime on March 24, 2003, the sentencing court properly included his previously "washed out" California convictions.

State v. Mehaffey, 125 Wn. App. 595, 105 P.3d 447 (February 3, 2005)

FACTS: In March 2000, the defendant was charged with possession of cocaine and was diverted into a treatment alternative. He failed to complete the treatment and came before the trial court for sentencing. The State amended its information to possession of methamphetamine instead of cocaine so the standard range sentence would be lower. The superior court judge permitted the amendment of the defendant's information, as only the name of the drug had changed.

The defendant's criminal history included four offenses in 1998: two -- taking a motor vehicle without permission and attempting to elude police – were committed on the same day. In 1999, he was sentenced for three counts of possession of stolen property committed on the same day and for one count of taking a motor vehicle without permission on a different day. The defendant argued that his offender score was six prior to the March 2000 offense, and with the addition of the 2000 possession charge, his offender score was now seven. The State argued that each of the current and prior offenses must be counted separately, for an offender score of eight. The trial court sentenced the defendant based on an offender score of eight. He appealed.

ISSUES: Is remand required to permit the trial court to exercise its discretion as to whether prior crimes constitute "the same criminal conduct" for purposes of an offender score?

HOLDING: Yes. Because the sentencing judge refused to decide whether a series of prior crimes constituted "the same criminal conduct" for purposes of the offender score for the current offense, the case was remanded by the Court of Appeals to allow the trial court to exercise its discretion. While the sentencing court may presume prior offenses were not the same criminal conduct when they were sentenced on different dates or in different courts, or were charged in separate informations, the court must at least make its own determination whether these crimes are the same criminal conduct. Thus, remand was required so that the trial court could make its own determination as to whether these crimes constituted the same criminal conduct.

State v. Bader, 125 Wn. App. 501, 105 P.3d 439 (February 1, 2005)

FACTS: On April 30, 1998, the defendant entered a guilty plea to one count of second degree child rape. He was sentenced to 102 months confinement and a 36 month term of community custody. The sentence was suspended to allow treatment under a SSOSA. Due to the defendant's failure to comply, the SSOSA sentence was revoked and his original sentence reinstituted. On August 16, 2002, the defendant filed a pro se motion for immediate release to community custody. He argued that the "in lieu of" provision allows him to begin serving his community custody term "in lieu of" earned early release – which essentially allows him to reduce his sentence by the three-year community custody term "in lieu of" reducing it by his earned early release time. The defendant's motion was denied and he appealed.

ISSUES: Does the SRA permit a reduction of the incarceration portion of an offender's sentence by a mandatory community custody term "in lieu of" reducing it by earned early release time?

HOLDING: No. The Court of Appeals held that former RCW 9.94A.120(10)(a) was unambiguous: "[T]he provision that the community custody begins upon release from prison or upon transfer to community custody 'in lieu of' earned early release refers to the commencement of the community custody term rather than at the end of the aggregate incarceration term ordered."

State v. Clarke, 124 Wn. App. 893, 103 P.3d 262 (December 27, 2004)

FACTS: Defendant was convicted in separate jury trials of two counts of second degree rape and other crimes. The trial court imposed exceptional minimum sentences under the non-persistent offender statute, RCW 9.94A.712(3). The defendant argued that the sentence the court imposed under the non-persistent offender statute is not an indeterminate sentence but a determinate sentence under the SRA that is invalid under Blakely.

ISSUES: Did the defendant's exceptional minimum term portion of his sentence violate the right to a jury trial under the U.S. Supreme Court's decision in Blakely? Did his sentence involve unconstitutional judicial fact-finding?

HOLDING: No, as to both issues. Except for prior convictions, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The "statutory maximum" for this purpose is the maximum sentence a judge may impose "solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." As the Court of Appeals stated: "There is no question but that the jury verdict for the crime of second degree rape mandates a **maximum** term of life as part of the indeterminate sentence. Thus, Blakely is not implicated to the extent of the maximum term of the sentences the court imposed here." The Court of Appeals also held that the defendant's sentence did not involve unconstitutional judicial fact-finding, finding that "[T]he aggravating

factors in this case, like that in Blakely, involved an exercise of judicial discretion to find that the presumptive sentence was clearly too lenient based on certain supporting facts . . . . In requiring jury determinations of facts use to increase a sentence beyond the statutory maximum, the Blakely court did not entirely remove judicial discretion from sentencing. The determination that the presumptive sentence is clearly too lenient is an exercise of judicial discretion that stands after Blakely." Thus, the Court of Appeals affirmed the judgment and sentence in this case.

State v. Smith, 124 Wn. App. 417, 102 P.3d 158 (November 30, 2004)

FACTS: Defendant was convicted of three counts of second-degree assault and an exceptional sentence downward was imposed. The defendant fired a single bullet into a vehicle occupied by three people. Substantial evidence showed that the defendant had a long history of being victimized by one of the victims and that she was in fear of him, along with the fact that the three convictions arose from the single act of firing a gun at one vehicle which contained three people. The standard sentencing range was 15-20 months on each count, running concurrently. The trial court imposed an exceptional sentence downward of one day for each assault count, running concurrently. The trial court further imposed three consecutive 36-month firearm sentence enhancements running consecutively to the one-day concurrent sentences. The defendant appealed her conviction and firearm enhancement sentence. The State cross-appealed the exceptional sentence downward.

ISSUES: Did the trial court err in imposing an exceptional sentence downward? Did the trial court abuse its discretion when it sentenced too leniently?

HOLDING: No. The court did not abuse its discretion in sentencing the defendant too leniently, or in imposing an exceptional sentence downward. The trial court reserves broad discretion to decrease a sentence if "[t]he operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the [SRA's] purpose…, as expressed in RCW 9.94A.010.' RCW 9.4A.535(1)(g). It properly exercised that discretion here."

State v. Maestas, 124 Wn. App. 352, 101 P.3d 426 (November 22, 2004)

FACTS: Defendant entered an Alford plea to one count of first degree robbery and one count of first degree burglary. The State recommended the standard sentencing range of 57-75 months for the robbery charge and 41-54 months for the burglary charge. During the sentencing hearing, the trial court sua sponte imposed concurrent exceptional sentences of 120 months based on the aggravating factors of the two crimes. While this matter was pending on appeal, Blakely was decided by the U.S. Supreme Court. Thereafter, the State conceded sentencing error and agreed that this matter should be remanded for re-sentencing. Defendant challenged his sentence and contended that the aggravating factors used to impose an exceptional sentence were done so as to operate as the equivalent of an element of a greater offense. Thus, to impose such a sentence on remand would violate principles of double jeopardy. The defendant also argued that after direct appeal, double jeopardy barred retrial on elements of which the defendant has been acquitted.

ISSUES: Upon re-sentencing requirements based on Blakely, does double jeopardy bar the imposition of an exceptional sentence on remand, providing it complies with Blakely?

HOLDING: On remand following vacation of aggravated exceptional sentence based on factors not submitted to and found by a jury in violation of Blakely, double jeopardy did not bar imposition of an aggravated sentence with procedures in compliance with Blakely. Even if aggravating factors were part of a greater substantive crime, double jeopardy would still not be implicated. Here, the sentencing court found there was sufficient evidence to find aggravating circumstances, thus the defendant cannot now claim that he was acquitted of any greater crime such that double jeopardy would be implicated.

State v. Alkire, 124 Wn. App. 169, 100 P.3d 837 (November 15, 2004)

FACTS: The defendant was convicted by jury verdict of second degree possession of stolen property and attempting to elude a pursuing police vehicle, and was given an increased penalty based on his extraordinary offender score. The defendant stipulated to the State's recitation of his history of convictions. Based on the undisputed history, his offender score was 20 for his possession count and 21 for the attempting to elude count. The standard sentence range for each count was 22-29 months, to be served concurrently. The trial court ruled that the sentence was "clearly too lenient" and imposed an exceptional sentence of 29 months on each count, to be served consecutively. The defendant appealed his sentence, contending that his sentence was invalid because it required the improper judicial fact-finding condemned in Apprendi and Blakely. He argued that the trial court's weighing of facts in deciding whether to impose an exceptional sentence amounts to improper judicial fact-finding.

ISSUES: Does imposing an increased penalty violate the Sixth Amendment and due process?

HOLDING: No. Exercising judicial discretion within the range authorized by law is not fact-finding. The exercise of sentencing discretion is not a fact that must be submitted to a jury under Apprendi and Blakely. The defendant's increased penalty did not violate his due process or Sixth Amendment rights.

State v. Harris, 123 Wn. App. 906, 99 P.3d 902 (November 15, 2004)

FACTS: Defendant was charged with one count of first degree child molestation. In exchange for the State to not file additional counts, the defendant agreed to a trial on stipulated facts contained in the police report. He waived his right to a jury trial and agreed that the court could consider the affidavit of probable cause "for imposing a standard range sentence." The defendant acknowledged in open court that the court was not bound by any sentence recommendations and could impose an exceptional sentence if it found sufficient grounds to do so. The defendant was found guilty and the parties recommended 67 months confinement. The defendant's community corrections officer (CCO) recommended 89 months confinement. The trial court indicated it would consider an exceptional sentence based on allegations in the CCO's

report, as the report contained more than just the facts of the offense. When defense counsel stated that he had not seen the CCO's report, the court continued the sentencing hearing. The defendant then filed a brief contesting a number of allegations in the CCO's report, did not contest the material facts, but instead argued the mitigating circumstances.

ISSUES: Should defendant's exceptional sentence be vacated because Blakely renders the exceptional sentence provisions of the SRA invalid and inoperable? Is RCW 9.94A.535, which provides that a judge, not a jury, will find aggravating factors supporting an exceptional sentence, facially invalid under Blakely? Is RCW 9.94A.530(2), which allows the court to make that determination by a preponderance of the evidence, facially invalid under Blakely? Was the defendant's sentence subject to reversal? Does the trial court on remand have the authority to empanel a jury to consider aggravating factors?

HOLDING: The Court of Appeals held that the exceptional sentence statutes were not facially invalid. The Court of Appeals also held that the trial court, on remand, had the authority to empanel a jury to determine the facts upon which a court may base an exceptional sentence. The Court of Appeals found that our courts, per the Superior Court Criminal Rules, have inherent power to supplement the exceptional sentence statutes with the constitutionally mandated procedures in Blakely. Specifically, the Court of Appeals stated that "[I]t is appropriate to exercise that power in these circumstances because doing so fulfills the legislative intent underlying the exceptional sentence provisions of the SRA and because there are no procedural alternatives for cases that require fact-finding and do not fall within the criminal history and waiver exceptions to Blakely's jury requirement." The Court of Appeals also held that the defendant's sentence was subject to reversal because the aggravating factors relied on by the trial court for the exceptional sentence were based on facts found outside the trial record. Finally, the Court of Appeals held here that "[P]ermitting the trial court to empanel a jury under CrR 6.16 to determine the facts upon which the court may base an exceptional sentence is *the only* constitutionally valid procedure for imposing exceptional sentences where the Blakely exceptions for criminal history and waiver do not apply."

State v. Van Buren, 123 Wn. App. 634, 98 P.3d 1235 (Oct. 5, 2004)

FACTS: After entering an Alford plea, Defendant Van Buren was convicted in Kitsap County Superior Court of two counts of third degree rape of a child and one count of third degree rape. Van Buren was given an exceptional sentence of 120 months followed by a 36-48 month term of community custody. Defendant appealed the calculation of his offender score and the trial court's finding that he lacked remorse for his crimes and his exceptional sentence.

ISSUES: Did the holding in Blakely, that a jury must find disputed facts beyond a reasonable doubt to support an exceptional sentence other than the fact of a prior conviction, be applied to defendant's case in which review was not yet final? Was the calculation of the defendant's offender score, which was based on his criminal history, a question of fact which required a jury finding? Was the determination that the defendant would receive "free crimes" if sentenced within the standard range a question of fact which required a jury finding? Was an exceptional sentenced warranted?

HOLDING: Yes an exceptional sentence was warranted. The holding in Blakely, that a jury must find disputed facts supporting an exceptional sentence beyond a reasonable doubt, other than the facts of prior convictions, applied to the defendant's case, because the defendant's case was not yet final on June 24, 2004 (the day that Blakely was announced), since he still had a pending motion for reconsideration in the Court of Appeals. The jury's finding that the defendant lacked remorse for his crimes was one justification cited by the sentencing court for imposing an exceptional sentence. The calculation of the defendant's offender score need not be proved to a jury, as the calculation of the offender score is a mixed question of law and fact, the "fact" being the fact of a prior conviction, which is not a jury question. Lastly, a determination whether a defendant with an offender score greater than nine receives "free crimes" if sentenced within the standard range so that an exceptional sentence be warranted, is part of the calculation of a defendant's offender score, and is not a question of fact which must be determined by a jury.

State v. Kinneman, 122 Wn. App. 850, 95 P.3d 1277 (August 16, 2004)

FACTS: Defendant, an attorney who made multiple unauthorized withdrawals from his Interest on Lawyer Trust Account (IOLTA), was convicted of 28 counts of first degree theft and 39 counts of second degree theft. After a restitution hearing, the superior court ordered the defendant to pay restitution.

ISSUES: Is the restitution portion of a sentence separate and distinct from the standard-range portion? Is the standard range portion identified without exercise of discretion according to the SRA's matrix of crimes and offender scores, while the amount of restitution is ordered at the discretion of the trial court?

HOLDING: Yes, as to both issues. An appellate court will not disturb a sentencing court's restitution award absent an abuse of discretion. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999). While a restitution order becomes part of an offender's sentence once imposed, the restitution portion of a sentence is separate and distinct from the standard-range portion, which is identified without exercise of discretion according to the SRA's matrix of crimes and offender scores. The amount of the restitution is at the discretion of the trial court. Unlike a standard range sentence, restitution is not entitled to a presumption that there can be no abuse of discretion as a matter of law. The Court of Appeals held that the State has the right to appeal an order of restitution whether or not the duration of the custody portion of the sentence was within the standard range.

State v. Gronnert, 122 Wn. App. 214, 93 P.3d 200 (July 6, 2004)

FACTS: Defendant Gronnert was convicted by guilty plea of possession of ephedrine with intent to manufacture. He faced a standard sentencing range of 21–27 months. In order for the defendant to obtain release from jail between his plea hearing and sentencing, he agreed to accept an exceptional sentence of 60 months if he violated conditions of his release. The defendant was released and within a week was arrested for possession of drug paraphernalia and

tested positive for methamphetamine. The defendant requested a DOSA sentence. The sentencing court denied the defendant's request for a DOSA sentence, stating that the DOSA program was not an effective way to deal with drug offender behavior. As he had violated his release conditions, the defendant was sentenced to an exceptional sentence of 60 months confinement. The defendant then appealed his 60 month sentence on several grounds, one of which was that his sentence was not consistent with the SRA of 1981, and that the sentencing court committed error by not exercising its discretion in rejecting his DOSA sentence request.

ISSUES: Did the trial court lack authority when it accepted the defendant's exceptional sentence plea agreement?

HOLDING: Yes. The trial court erred by sentencing the defendant to an exceptional sentence that was not consistent with the purpose of the SRA. The Court of Appeals found that the trial court lacked authority to accept defendant's plea agreement because an exceptional sentence is appropriate only when the circumstances of the crime can distinguish it from other crimes of the same statutory category. The defendant's standard sentencing range for his crime was 21–27 months. When he violated his conditions of release order, he potentially faced a bail jumping charge, for which a defendant with an offender score of 1 means a standard range of 1–3 months. Thus, even if the defendant was sentenced for each of these charges consecutively, he would only face 22-30 months instead of 60 months to which he was sentenced. The Court of Appeals reversed and remanded the case for re-sentencing within the standard sentencing range. The Court of Appeals also held in this case that when looking at the purposes of the SRA, "a 60-month sentence cannot be justified as proportionate for a defendant with an offender score of 0 who is guilty of possession of ephedrine with intent to manufacture methamphetamine and a violation of a release order. Nor is a 60-month sentence commensurate with the punishment imposed on others committing similar offenses." The Court of Appeals reversed and remanded the case for re-sentencing within the standard sentencing range.